

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GPNE CORP.,) C-12-02885 LHK
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) APRIL 3, 2014
)
APPLE, INC.,) PAGES 1-79
)
DEFENDANT.)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: BURNS & LEVINSON
BY: HOWARD J. SUSSEY
125 SUMMER STREET
BOSTON, MASSACHUSETTS 02110

NELSON, BUMGARDNER, CASTO
BY: BARRY BUMGARDNER
3131 WEST 7TH STREET, SUITE 300
FORT WORTH, TEXAS 76107

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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APPEARANCES (CONTINUED)

FOR THE PLAINTIFF: KERR & WAGSTAFFE
BY: PATRICIA L. PEDEN
100 SPEAR STREET, 18TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

ALSO PRESENT: EDWIN WONG

FOR THE DEFENDANT: FISH & RICHARDSON
BY: KATHERINE K. LUTTON
500 ARGUELLO STREET, SUITE 500
REDWOOD CITY, CALIFORNIA 94063

BY: CHRISTOPHER O. GREEN
AAMIR KAZI
1180 PEACHTREE STREET, 21ST FLOOR
ATLANTA, GEORGIA 30309

BY: BENJAMIN C. ELACQUA
1 HOUSTON CENTER
1221 MCKINNEY, 28TH FLOOR
HOUSTON, TEXAS 77010

WILMER, CUTLER, PICKERING, HALE & DORR
BY: JOSEPH J. MUELLER
60 STATE STREET
BOSTON, MASSACHUSETTS 02109

BY: MATTHEW J. HAWKINSON
950 PAGE MILL ROAD
PALO ALTO, CALIFORNIA 94304

ALSO PRESENT: NOREEN KRALL
KEN MOORE

1 SAN JOSE, CALIFORNIA

APRIL 3, 2014

2 P R O C E E D I N G S

3 (COURT CONVENED AT 2:55 P.M.)

4 THE CLERK: CALLING CASE NUMBER C-12-02885 LHK, GPNE
5 CORPORATION VERSUS APPLE, INCORPORATED.

6 MS. LUTTON: GOOD MORNING, YOUR HONOR. OR AFTERNOON.

7 THE COURT: DID YOU CALL THE CASE, MARTHA?

8 THE CLERK: I DID.

9 THE COURT: OKAY. PLEASE STATE YOUR APPEARANCES,
10 THEN.

11 MR. SUSSER: HI, YOUR HONOR. HOWARD SUSSER FOR
12 PLAINTIFF GPNE, AND WITH ME IS BARRY BUMGARDNER, CO-COUNSEL,
13 AND PATRICIA PEDEN, CO-COUNSEL.

14 AND IN THE SECOND ROW THERE IS EDWIN WONG, CEO OF GPNE,
15 AND HIS WIFE AND DAUGHTER.

16 MS. LUTTON: AND KATHY LUTTON --

17 THE COURT: ONE SECOND, PLEASE. YOU HAVE
18 MR. BUMGARDNER AND WHO ELSE IS WITH YOU?

19 MR. SUSSER: PATRICIA PEDEN FROM KERR & WAGSTAFFE
20 FIRM. SHE MADE A NOTICE OF APPEARANCE SEVERAL WEEKS AGO.

21 THE COURT: AH, OKAY, GREAT. THANK YOU. I JUST
22 NEEDED TO GET HER.

23 OKAY. THANK YOU.

24 MS. LUTTON: AND KATHY LUTTON ON BEHALF OF DEFENDANT
25 APPLE. AND WITH ME ARE CHRIS GREEN, BEN ELACQUA, JOE MUELLER,

1 MATT HAWKINSON, AND AAMIR KAZI.

2 AND I ALSO HAVE THE CLIENT IN THE ROOM, NOREEN KRALL AND
3 KEN MOORE.

4 THE COURT: OKAY. GOOD AFTERNOON. YOU HAVE
5 MR. GREEN, MR. ELACQUA, MR. MUELLER, MR. HAWKINSON, AND
6 MR. KAZI.

7 MS. LUTTON: YES.

8 THE COURT: OKAY. I JUST WANTED TO MAKE SURE I GOT
9 EVERYBODY.

10 LET'S START WITH THE INVALIDITY ON THE '267 PATENT.

11 IS APPLE REQUESTING A FINDING OF INVALIDITY AS TO ALL THE
12 CLAIMS THAT DON'T RECITE DIFFERING FREQUENCIES? OR JUST CLAIMS
13 1, 30, AND 39?

14 MS. LUTTON: YOUR HONOR, AAMIR KAZI IS GOING TO
15 HANDLE THIS ARGUMENT.

16 THE COURT: OKAY.

17 MS. LUTTON: THIS IS HIS FIRST ARGUMENT IN COURT.

18 THE COURT: OKAY, GREAT. YOU GET MORE TIME. THIS IS
19 YOUR FIRST ARGUMENT IN COURT, YOU GET MORE TIME.

20 MR. KAZI: THANK YOU FOR THE TIME, YOUR HONOR.

21 SO AS TO YOUR QUESTION, I THINK WE ARE -- OUR POSITION IS
22 THAT THE CLAIMS THAT DO NOT REQUIRE DIFFERENT FREQUENCIES ARE
23 CLAIMS 1, 30 AND 39. THOSE WOULD BE INVALID.

24 THE COURT: OKAY. BUT WHAT ABOUT -- I MEAN, I SEE
25 SOME OTHER CLAIMS AS WELL THAT, THAT DON'T CLAIM DIFFERING

1 FREQUENCIES. WHY WOULDN'T THOSE ALSO BE EQUALLY INVALID? IS
2 THERE SOMETHING DIFFERENT ABOUT CLAIMS 1, 11, 12, 18?

3 MR. KAZI: WELL, THE CLAIMS WE ASSERTED --

4 THE COURT: 13 -- EXCUSE ME -- AS WELL.

5 MR. KAZI: SORRY.

6 THE CLAIMS THAT WE ASSERT INVALIDITY DEFENSE AGAINST WERE
7 THE ONES THAT WERE ASSERTED AGAINST APPLE.

8 THE COURT: BUT I THOUGHT THEY ALSO ASSERTED CLAIM 13
9 AND 18.

10 MR. KAZI: THAT'S RIGHT, YOUR HONOR. CLAIM 18 IS
11 DEPENDENT ON 13, WHICH WOULD BE DEPENDENT ON CLAIM 12, AND THEN
12 THAT'S DEPENDENT ON CLAIM 1. SO IF CLAIM 1 IS INVALID, THEN
13 THAT ENTIRE GROUP OF CLAIMS SHOULD BE INVALIDATED.

14 THE COURT: OKAY. SO YOU ARE THEN SAYING THAT CLAIMS
15 1, 11, 12, 13, 18 SHOULD ALSO BE -- WELL, YOUR MOTION -- YOUR
16 MOTION SPECIFICALLY CITES CLAIMS 1, 30 AND 39, BUT IT SOUNDS
17 LIKE THE SAME THEORY WOULD ALSO APPLY TO 11, 12, 13 AND 18.

18 MR. KAZI: I THINK THAT'S RIGHT, YOUR HONOR. IF THE
19 INDEPENDENT-BASED CLAIM IS INVALID, THEN I THINK BY LAW THE
20 DEPENDENT CLAIMS ARE INVALIDATED AS WELL.

21 THE COURT: I'M NOT CLEAR ON WHY THEY WEREN'T PART OF
22 YOUR MOTION.

23 MR. SUSSEER: YOUR HONOR, CAN I TRY TO SHED SOME LIGHT
24 ON THIS IF I MAY?

25 THE COURT: WELL, LET ME GET AN ANSWER FIRST.

1 MR. SUSSER: OKAY. THANK YOU, YOUR HONOR.

2 MR. KAZI: OKAY. I'M SORRY. WHAT WAS THE QUESTION,
3 YOUR HONOR?

4 THE COURT: OKAY. YOUR MOTION MOVED ON CLAIMS 1, 30
5 AND 39, WHICH I'M INCLINED TO GRANT. OKAY?

6 BUT THEN I LOOK AT SOME OF THESE OTHER CLAIMS, THEY ALSO
7 DON'T HAVE THE LIMITATION OF DIFFERING FREQUENCIES, SO I DON'T
8 UNDERSTAND WHY YOU DIDN'T MOVE ON THOSE, AS WELL AS YOU SAID,
9 YOU KNOW, CLAIM 11 DEPENDS FROM CLAIM 1, CLAIM 12 DEPENDS FROM
10 CLAIM 11.

11 MR. KAZI: RIGHT. AND, YOUR HONOR, MY UNDERSTANDING
12 IS IF THE INDEPENDENT-BASED CLAIM IS INVALIDATED, THEN THE
13 DEPENDENT CLAIMS WOULD ALSO BE INVALID.

14 THE COURT: OKAY. SO THAT WOULD INCLUDE 11, 12, 13,
15 18 AND 31?

16 MR. KAZI: THAT'S RIGHT, YOUR HONOR.

17 THE COURT: OKAY. ALL RIGHT.

18 GO AHEAD, MR. SUSSER.

19 MR. SUSSER: THANK YOU, YOUR HONOR.

20 THAT'S NOT THE WAY PATENT LAW WORKS. IF YOU HAVE AN
21 INDEPENDENT CLAIM THAT'S INVALID, THE DEPENDENT CLAIM COULD
22 POSSIBLY ADD ANOTHER PATENTABLE LIMITATION THAT IS SEPARATELY
23 PATENTABLE. IN FACT, THAT'S WHY WE DO DEPENDENT CLAIMS IS
24 BECAUSE THERE'S A CHANCE THAT THE INDEPENDENT CLAIM COULD BE
25 HELD INVALID AND YOU ADD ALL THESE BELLS AND WHISTLES IN

1 DEPENDENT CLAIMS TO HAVE SOMETHING IN CASE THAT HAPPENS.

2 SO MY BROTHER'S STATEMENT ABOUT IF AN INDEPENDENT CLAIM
3 BECOMES INVALID, THE DEPENDENT CLAIM IS ALSO INVALID IS
4 BACKWARDS. IF THE DEPENDENT CLAIM IS INVALID FOR PRIOR ART,
5 THEN THE INDEPENDENT CLAIM IS INVALID BECAUSE THE DEPENDENT
6 CLAIM IS EVERYTHING IN THE INDEPENDENT CLAIM, PLUS ONE MORE
7 LIMITATION OR TWO MORE.

8 SO -- BUT MY UNDERSTANDING OF THEIR MOTION WAS THAT THEY
9 PICKED ONLY THE CLAIMS THAT WE'RE ASSERTING IN THE '267 THAT
10 ARE NON-MULTIFREQUENCY CLAIMS, THAT ALL OF THE OTHER CLAIMS
11 THAT WE'RE ASSERTING IN THE '267 STEM BACK TO SOME INDEPENDENT
12 CLAIM OR DEPENDENT CLAIM WITH MULTIFREQUENCIES.

13 THE COURT: ALL RIGHT.

14 MR. SUSSER: THAT WAS NOT --

15 THE COURT: LET'S TEST THAT. GO TO CLAIM 13. YOU
16 ARE ALLEGING CLAIM 13 OF CLAIM -- OF PATENT '267, SO TELL ME
17 WHERE IN CLAIM 13 IT HAS THE MULTIPLE FREQUENCIES.

18 I'LL JUST READ IT. "THE FIRST NODE OF CLAIM 12 WHEREIN
19 THE RANDOM ACCESS REQUEST SIGNAL TRANSMITTED FROM THE FIRST
20 NODE INCLUDES RANDOMLY GENERATED INFORMATION CREATED BY THE
21 FIRST NODE WHEREIN THE FIRST GRANT RETURNS SAID RANDOMLY
22 GENERATED INFORMATION TO THE FIRST NODE TO ENABLE
23 IDENTIFICATION OF THE FIRST NODE AS A DESIRED RECIPIENT OF THE
24 FIRST GRANT."

25 SO WHERE IN THERE, TELL ME, DOES IT TALK ABOUT DIFFERING

1 FREQUENCIES, MULTIPLE FREQUENCIES? THAT'S CLAIM 13 WHICH YOU
2 HAVE ASSERTED.

3 MR. KAZI: YOUR HONOR, CAN I ADDRESS MR. SUSSEER'S
4 COMMENT?

5 THE COURT: NO. LET ME GET AN ANSWER, PLEASE.

6 MR. KAZI: SURE.

7 MR. SUSSEER: YOUR HONOR, I HAVE TO GO BACK AND LOOK
8 AT OUR -- I WANT TO JUST DOUBLE-CHECK ABOUT THE NUMBER OF THE
9 CLAIMS THAT WE -- OF THE '267, THE NUMBERS OF THE CLAIMS THAT
10 WE'RE ASSERTING AND MAKE SURE THAT WE'RE TALKING ABOUT THE SAME
11 THINGS.

12 OF COURSE THE FOCUS IN THE BRIEFING WAS ON THE SPECIFIC
13 ONES THAT WE UNDERSTOOD LACKED THE NON-MULTIFREQUENCY.

14 THE COURT: ALL RIGHT. YOU'VE GOT THREE LAWYERS
15 HERE. TELL ME, IS THERE ONE THAT KNOWS WHICH CLAIMS YOU'VE
16 ASSERTED FROM THE '267 PATENT?

17 MR. SUSSEER: I JUST -- WITH THE THREE PATENTS, YOUR
18 HONOR, I APOLOGIZE, I JUST DON'T HAVE IT MEMORIZED.

19 THE COURT: OKAY. ARE YOU DOUBTING ME WHEN I'M
20 TELLING YOU THAT YOU'VE ASSERTED CLAIM 13?

21 MR. SUSSEER: OH, NO.

22 THE COURT: OKAY. SO WHAT'S THE ANSWER TO CLAIM 13?
23 I DON'T MEAN TO BE AGGRESSIVE HERE, BUT THIS IS SUMMARY
24 JUDGMENT AND I NEED AN ANSWER. OKAY?

25 MR. SUSSEER: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT. SO I'M TELLING YOU YOU'VE
2 ASSERTED CLAIM 13.

3 MR. SUSSER: OKAY.

4 THE COURT: IF YOU DOUBT ME, THAT'S FINE. THEN TELL
5 ME SOMEONE ELSE ON YOUR TEAM WHO KNOWS THE ANSWER AND TELL US
6 THE RIGHT CLAIMS THAT HAVE BEEN ASSERTED, THAT YOU'VE ASSERTED.

7 MR. SUSSER: THANK YOU, YOUR HONOR.

8 SO 13 --

9 THE COURT: YES.

10 MR. SUSSER: 13 -- 13 DOES NOT HAVE MULTIFREQUENCY,
11 IT DEPENDS FROM 12, WHICH DOES NOT HAVE MULTIFREQUENCY, WHICH
12 DEPENDS FROM 11, AND THAT DEPENDS FROM 1.

13 AND IT SAYS, JUST AS YOU SAID --

14 THE COURT: OKAY. LET'S GO TO CLAIM 18. I AM
15 REPRESENTING TO YOU THAT THAT IS WHAT YOU HAVE ASSERTED. IF
16 SOMEONE ON YOUR TEAM TELLS ME OTHERWISE, THAT'S FINE. THEY
17 SHOULD SPEAK UP RIGHT NOW.

18 I'M GOING TO READ YOU CLAIM 18. "THE FIRST NODE OF CLAIM
19 11 WHEREIN A FINAL DATA PACKET FROM TOTAL NUMBER OF RELATED
20 PACKETS COMPRISES INFORMATION WHICH INDICATES THAT THE FINAL
21 DATA PACKET IS THE LAST DATA PACKET."

22 SO TELL ME WHERE IN THERE IS TALKING ABOUT MULTIPLE OR
23 DIFFERING FREQUENCIES.

24 MR. SUSSER: I DO NOT SEE IT IN CLAIM 18 AS YOU READ
25 IT, YOUR HONOR. THANK YOU.

1 AND THAT TRACKS BACK TO 11, WHICH ALSO DOESN'T CLAIM
2 MULTIFREQUENCIES, AND THAT GOES BACK TO 1.

3 THE COURT: OKAY. LET'S GO TO CLAIM 31, WHICH I'M
4 ALSO REPRESENTING TO YOU YOU'VE ASSERTED AGAINST THE
5 DEFENDANTS. IF SOMEONE ON YOUR TEAM WANTS TO SAY THAT'S NOT A
6 CLAIM YOU'VE ASSERTED, NOW IS THE TIME TO SPEAK UP. YOU'VE GOT
7 THREE LAWYERS HERE. I ASSUME SOMEBODY KNOWS WHICH OF THE TEN
8 CLAIM TERMS YOU'VE ASSERTED AGAINST THE DEFENDANT.

9 HERE IS 31. "THE FIRST NODE OF CLAIM 30 WHEREIN THE
10 RANDOM ACCESS REQUEST SIGNAL TRANSMITTED FROM THE FIRST NODE
11 INCLUDES RANDOMLY GENERATED INFORMATION CREATED BY THE FIRST
12 NODE WHEREIN THE FIRST GRANT RETURNS SAID RANDOMLY GENERATED
13 INFORMATION TO THE FIRST NODE TO ENABLE IDENTIFICATION OF THE
14 FIRST NODE AS A DESIRED RECIPIENT OF THE FIRST GRANT."

15 MR. SUSSE: THANK YOU.

16 MR. BUMGARDNER HAS HANDED ME THE CLAIMS AS YOU --

17 THE COURT: OKAY. SO WHAT ARE THE CLAIMS YOU'VE
18 ASSERTED AGAINST THE '267?

19 MR. SUSSE: I'M SORRY. 13.

20 THE COURT: YES.

21 MR. SUSSE: 18.

22 THE COURT: YES.

23 MR. SUSSE: 30.

24 THE COURT: YES.

25 MR. SUSSE: 31.

1 THE COURT: YES.

2 MR. SUSSER: 13.

3 THE COURT: YES.

4 MR. SUSSER: AND 42.

5 THE COURT: THAT'S RIGHT.

6 MR. SUSSER: OKAY.

7 THE COURT: BUT WHERE IN 31 DOES THAT ALSO MENTION

8 MULTI OR DIFFERING FREQUENCIES?

9 MR. SUSSER: I DON'T SEE IT IN 31. I DON'T SEE IT IN
10 30 FROM WHICH IT DEPENDS.

11 OKAY, YOUR HONOR, THAT'S RIGHT.

12 THE COURT: OKAY. ALL RIGHT. LET'S GO TO THE LAST
13 ONE. THAT'S 39.

14 MR. SUSSER: 39, YES, AND 42 IS THE LAST.

15 THE COURT: YES.

16 MR. SUSSER: OKAY.

17 THE COURT: 42 DOES HAVE DIFFERING FREQUENCIES.

18 APPLE HASN'T MOVED ON 42, AND I WOULD DENY IT IF THEY DID.

19 BUT THEY HAVE MOVED ON 39, AND THAT IS ONE OF THE ASSERTED
20 CLAIMS. "A FIRST NODE IN A DATA NETWORK, THE DATA NETWORK
21 INCLUDING A PLURALITY OF NODES, THE FIRST NODE COMPRISING," AND
22 IT'S A VERY LONG ONE, SO I'M NOT GOING TO READ THE WHOLE THING,
23 BUT LET ME JUST ASK YOU IF IT MENTIONS MULTI OR DIFFERING
24 FREQUENCIES.

25 MR. SUSSER: NO, IT DOESN'T. YOU'RE CORRECT.

1 THE COURT: OKAY. ALL RIGHT.

2 SO NOW LET ME GO BACK TO APPLE. WHY DIDN'T YOU MOVE ON
3 THE OTHER CLAIMS? WHY DID YOU ONLY MOVE ON 1, 30 AND 39 AND
4 NOT ON THE OTHER CLAIMS THAT HAVE BEEN ASSERTED AGAINST YOU?

5 MR. KAZI: OUR POSITION IS THAT IF THE BASE
6 INDEPENDENT CLAIM IS INVALIDATED, THEN THE DEPENDENT CLAIMS ARE
7 INVALIDATED AS WELL.

8 AND I THINK MR. SUSSER, THE POINT HE RAISED WAS ABOUT THE
9 REASON FOR DEPENDENT CLAIMS AND THE WAY IT WORKS WITH
10 INVALIDATED OVER PRIOR ART.

11 BUT THIS IS NOT A PRIOR ART BASIS FOR INVALIDITY. THIS IS
12 A 112 BASIS, AND SO UNDER 112, IF THE BASE CLAIM IS
13 INVALIDATED, THEN BY LAW I THINK THE DEPENDENT CLAIMS SHOULD BE
14 INVALIDATED AS WELL. SO WE MOVED ONLY ON THE INDEPENDENT
15 CLAIMS THAT WERE ASSERTED AGAINST APPLE.

16 BUT IT IS OUR POSITION THAT ANY DEPENDENT CLAIMS BASED ON
17 THOSE INDEPENDENT CLAIMS, PARTICULARLY THE ONES THAT DO NOT
18 HAVE THE DIFFERING FREQUENCY REQUIREMENTS, ARE ALSO INVALID.

19 THE COURT: WELL, IT WOULD HAVE BEEN BETTER IF YOU
20 HAD EXPLICITLY REQUESTED IT.

21 MR. KAZI: I -- THAT'S PROBABLY RIGHT, YOUR HONOR.

22 THE COURT: ALL RIGHT. BUT YOU AGREE THAT CLAIM 42,
23 WHICH HAS BEEN ASSERTED AGAINST YOU BY THE PLAINTIFF, DOES HAVE
24 DIFFERING FREQUENCIES; CORRECT?

25 MR. KAZI: YES, YOUR HONOR, I AGREE THAT CLAIM 42

1 DOES HAVE DIFFERING FREQUENCIES.

2 BUT WE BELIEVE IT'S STILL INVALID BECAUSE IT'S DEPENDENT
3 ON AN INDEPENDENT-BASED CLAIM THAT DOESN'T HAVE DIFFERING
4 FREQUENCIES.

5 THE COURT: OKAY. YOU DIDN'T ARGUE THAT IN YOUR
6 MOTION. YOU DIDN'T ARGUE IT IN YOUR MOTION AND YOU DIDN'T
7 ARGUE THAT IN YOUR REPLY BRIEF. WHY SHOULD I LET YOU SANDBAG
8 RIGHT HERE AT THE HEARING?

9 MR. SUSSEER: AND IF -- IF THAT DEPENDENT CLAIM ADDS A
10 LIMITATION OF MULTIFREQUENCIES, THEN NOT ONLY IS IT NOT RAISED
11 IN THEIR BRIEF, BUT THERE'S NO BASIS TO CHALLENGE THE VALIDITY
12 OF IT, EVEN IF IT WAS RAISED IN THEIR BRIEF, BECAUSE THEIR
13 BRIEF IS ABOUT THE LACK OF MULTIFREQUENCIES.

14 MR. KAZI: OKAY. I UNDERSTAND, YOUR HONOR, I THINK.

15 SO AT THIS TIME OUR POSITION IS THAT THE CLAIMS THAT DO
16 NOT HAVE THE DIFFERING FREQUENCIES LIMITATION ARE INVALID, SO
17 YOU'RE RIGHT, CLAIM 42 WOULD NOT BE ONE OF THOSE CLAIMS.

18 THE COURT: SO YOU'RE NOT CHALLENGING THE VALIDITY OF
19 CLAIM 42?

20 MR. KAZI: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: OKAY. I HAVE A QUESTION FOR MR. SUSSEER.

22 WHAT EVIDENCE HAS GPNE SUBMITTED THAT SUPPORTS YOUR CLAIM
23 THAT LTE PRODUCTS INFRINGE THE NODE LIMITATION?

24 MR. SUSSEER: THANK YOU, YOUR HONOR.

25 THE EXPERT REPORTS OF DR. ESMAEL DINAN HAVE EXTENSIVE

1 DISCLOSURE OF CLAIM CHARTS AND OTHER DESCRIPTION OF LTE, HOW IT
2 WORKS AND HOW IT MAPS TO THE CLAIMS OF THE, OF ALL THREE
3 PATENTS, IN PARTICULAR WITH RESPECT TO THE TERM "NODE."

4 AND THAT'S NOT --

5 THE COURT: BUT HE DIDN'T TEST LTE. HE ONLY TESTED
6 3G; RIGHT?

7 MR. SUSSEER: THAT'S RIGHT. IN -- IN THE CASE OF --
8 I'M SORRY. GPRS 3G, YES.

9 THE LTE TESTING EQUIPMENT WAS SOME EXTRAORDINARY, SEVERAL
10 HUNDREDS OF THOUSANDS OF DOLLARS OR MILLIONS OF DOLLARS, I
11 DON'T KNOW, AND WAS UNAVAILABLE TO DR. DINAN FOR THIS CASE.

12 HIS OPINION IS THAT --

13 THE COURT: OH, WAIT. I'M SORRY. I DIDN'T
14 UNDERSTAND THAT. YOU'RE SAYING HE HAD THE EQUIPMENT TO TEST
15 GPRS, BUT HE DIDN'T HAVE THE EQUIPMENT, BECAUSE IT WAS TOO
16 EXPENSIVE, TO TEST LTE? IS THAT YOU JUST SAID?

17 MR. SUSSEER: THAT'S RIGHT. HE WAS ONLY ABLE -- WE
18 WERE ONLY ABLE TO RENT, ON A TEMPORARY BASIS, THE AGILENT
19 EQUIPMENT THAT'S THE SUBJECT OF THOSE OTHER MOTIONS THAT WOULD
20 ENABLE THE GPRS PROTOCOL TESTING.

21 THE LTE, THE 4G EQUIPMENT, WAS AN ASTRONOMICAL PRICE THAT
22 WE COULD NOT ACCESS, OR HE COULD NOT ACCESS.

23 THE COURT: LIKE HOW MUCH?

24 MR. SUSSEER: I THOUGHT IT WAS HUNDREDS OF THOUSANDS
25 OF DOLLARS. IT COSTS MILLIONS TO BUY THEM. IT'S A DIFFERENT

1 MACHINE.

2 AND HIS OPINION IN, IN HIS EXPERT REPORTS, AND THIS COVERS
3 MANY, MANY PAGES, IS THAT LTE --

4 THE COURT: YOUR DAMAGES ARE ASKING FOR A HUNDRED
5 MILLION. YOU'RE NOT WILLING TO SPEND A COUPLE HUNDRED THOUSAND
6 TO --

7 MR. SUSSER: MY UNDERSTANDING IS YOU HAVE TO --

8 THE COURT: -- INVEST IN PROVING INFRINGEMENT?

9 MR. SUSSER: WELL, WE HAVE OTHER BASES TO PROVE
10 INFRINGEMENT. THE DECISION WAS MADE THAT IT WAS SEVERAL
11 HUNDRED THOUSAND DOLLARS TO BUY A MACHINE AND THAT WAS NOT IN
12 THE BUDGET OF THIS COMPANY TO DO THAT.

13 BUT REGARDLESS, HIS OPINIONS WITH RESPECT TO LTE ARE --
14 FOR THE FULL RANGE OF THE CLAIM ELEMENTS IS THAT LTE, BY ITS
15 NATURE, ALWAYS INFRINGES. IT'S NOT SOMETHING THAT HAS
16 DIFFERENT MODES OF OPERATION.

17 IT HAS TO DO WITH THE MULTIFREQUENCY CHANNELS THAT ARE
18 ALWAYS USED IN LTE. IT'S A PART -- IT'S A VERY TECHNICAL ISSUE
19 WE CAN GET INTO, BUT WHAT HAPPENS IS IT'S ALWAYS USING MULTIPLE
20 FREQUENCIES. IT'S NOT A COMMAND THAT'S A PART OF A PROTOCOL
21 THAT ALLOWS FOR MULTIFREQUENCIES.

22 AND SO WHAT WAS CONCLUDED WAS THAT FOR LTE, FOR LTE, THE
23 CASE FOR INFRINGEMENT WAS VERY STRONG, CONCLUSIVE TO US, JUST
24 BASED ON HOW LTE WORKS, BASED ON THAT THE APPLE DEVICES HAVE
25 PASSED CONFORMANCE TESTING PROVING THAT THEY DO THE LTE

1 PROTOCOL AS MAPPED IN HIS CHARTS WHERE HE TAKES ALL OF THE
2 CLAIM ELEMENTS AND PUTS THEM AGAINST THE LTE PROTOCOL STEPS, AS
3 CONFIRMED BY APPLE'S OWN CONFORMANCE TESTING, AND THAT FOR LTE,
4 WE WENT WITH THAT OUT OF -- FOR THOSE REASONS.

5 THE COURT: OKAY. SO YOUR EVIDENCE ON THIS POINT ARE
6 DR. DINAN'S CLAIM CHARTS? THAT'S YOUR EVIDENCE?

7 MR. SUSSER: AND THE CONFORMANCE TESTING BY APPLE,
8 YOUR HONOR.

9 AND WE'VE HAD DEPOSITIONS OF THEM AS WELL, OF THEIR
10 30(B)(6) WITNESSES.

11 THERE WERE ALSO THE ISSUE OF THE BASEBAND LOGS.

12 AND WHEN I SAY THE APPLE CONFORMANCE TESTING, WHAT I'M
13 REFERRING TO, YOUR HONOR, IS THAT APPLE, LIKE ALL OF THE
14 MANUFACTURERS OF THESE DEVICES, HAS TO SEND OUT TO THIRD PARTY
15 COMPANIES, INCLUDING ONE MOST PROMINENTLY CALLED CETECOM,
16 C-E-T-E-C-O-M, AND THEY HAVE PRODUCED DOZENS AND DOZENS OF
17 THESE REPORTS FROM CETECOM CONFIRMING THAT ALL OF THE PHONES,
18 ALL OF THE SMARTPHONES ACCUSED PASSED VERY SPECIFIC PARTS OF
19 THE LTE STANDARD COMPLIANCE.

20 AND OUR EXPERTS HAVE SAID THAT THIS TESTING THAT WAS DONE
21 FOR APPLE BY ITS THIRD PARTY CERTIFICATION COMPANY CONFIRMS
22 THESE ELEMENTS ARE MET IN OUR CLAIM CHART.

23 SO IT'S A COMBINATION OF ALL OF THESE THINGS THAT GPNE
24 WOULD REPLY UPON AT TRIAL AS TO THE LTE.

25 THE COURT: DO YOU WANT TO RESPOND TO THAT?

1 MR. GREEN: YES, YOUR HONOR. CHRISTOPHER GREEN,
2 FIRST OF ALL, FROM FISH & RICHARDSON ON BEHALF OF APPLE. THANK
3 YOU FOR YOUR TIME TODAY.

4 THERE'S A LOT THERE, SO LET ME TRY TO UNWIND THAT.

5 WHAT I HEAR MR. SUSSEER DOING IS BASICALLY DRAFTING AN
6 OPPOSITION AS HE STANDS AT THE PODIUM, BECAUSE NONE OF THAT WAS
7 IN THE OPPOSITION BRIEF THAT WE RECEIVED IN RESPONSE TO OUR
8 MOTION FOR SUMMARY JUDGMENT.

9 THE COURT: ALL RIGHT. WELL THEN, WHY DON'T I ASK
10 MR. SUSSEER, JUST POINT ME TO THE RELEVANT PAGE NUMBERS AND LINE
11 NUMBERS. WHERE IS WHAT YOU JUST SAID IN YOUR OPPOSITION?

12 MR. SUSSEER: OKAY. THANK YOU, YOUR HONOR.

13 SO THE MOTION FOR SUMMARY JUDGMENT WAS JUST ABOUT THE TERM
14 "NODE," RIGHT, NOT ABOUT WHETHER ALL OF THE DOZEN OR SO
15 ELEMENTS OF, OF THE ASSERTED CLAIMS MAP TO LTE.

16 SO IF WE'RE TALKING ABOUT JUST THE TERM "NODE," MR. --

17 THE COURT: I'M TALKING ABOUT WHAT EVIDENCE YOU HAVE
18 OF INFRINGEMENT AS TO LTE ACCUSED PRODUCTS. IS THAT NOT IN
19 YOUR OPPOSITION TO THE SUMMARY JUDGMENT MOTION ON INFRINGEMENT?

20 MR. SUSSEER: I'M SORRY, YOUR HONOR.

21 MR. GREEN: IT'S NOT THERE.

22 MR. SUSSEER: NO -- WELL, WE ATTACHED DR. DINAN'S
23 EXPERT REPORTS.

24 BUT THE SUMMARY JUDGMENT WAS ONLY AS TO ONE ELEMENT, YOUR
25 HONOR, SO I'M NOT REALLY -- I'M NOT UNDERSTANDING YOUR HONOR --

1 LIKE WE DON'T HAVE -- WE DON'T HAVE AN ARGUMENT ABOUT WHETHER
2 THERE'S A RANDOM GENERATED INFORMATION --

3 THE COURT: WELL, THERE IS AN ARGUMENT ABOUT OPERATE
4 INDEPENDENTLY OF THE TELEPHONE NETWORK.

5 MR. GREEN: ABSOLUTELY, YOUR HONOR.

6 THE COURT: LET ME -- MR. SUSSEER, I'M HEARING FROM
7 YOU IT'S NOT IN YOUR OPPOSITION, BUT YOU THINK IT'S IN
8 DR. DINAN'S REPORT.

9 MR. SUSSEER: OH, SURE IT'S IN DR. DINAN'S REPORT.

10 THE COURT: ALL RIGHT. GIVE ME A COPY AND TELL ME
11 WHAT ARE THE PARAGRAPH NUMBERS.

12 MR. SUSSEER: OH, SURE.

13 THE COURT: I'M PREPARING AN ORDER. I NEED TO KNOW
14 PARAGRAPH NUMBERS THAT I CAN CITE, SO --

15 (PAUSE IN PROCEEDINGS.)

16 MR. SUSSEER: THIS IS THE EXPERT REPORT OF DR. DINAN.
17 I HAVE A CLEAN COPY.

18 THE COURT: AND I WANT YOU TO POINT TO WHAT EVIDENCE
19 THERE IS THAT LTE ACCUSED PRODUCTS INFRINGE, AND I'M --

20 MR. SUSSEER: THANK YOU, YOUR HONOR.

21 THE COURT: I SHOULD REALLY JUST SAY OPERATE
22 INDEPENDENTLY OF A TELEPHONE NETWORK ISSUE IF THE NODE ISSUE IS
23 CONFUSING FOR YOU.

24 SO LET'S TALK ABOUT OPERATING INDEPENDENTLY OF A TELEPHONE
25 NETWORK. WHAT DO YOU HAVE THAT'S LTE SPECIFIC AND NOT 3G OR

1 GPRS?

2 MR. SUSSER: OKAY, YOUR HONOR.

3 THE COURT: YEAH.

4 MR. SUSSER: OKAY, YOUR HONOR. THERE'S A SECTION IN
5 THIS EXPERT REPORT THAT STARTS AT PAGE 99 -- AND I CAN HAND
6 THIS UP TO YOU.

7 THE COURT: SURE, WHY DON'T YOU?

8 MR. SUSSER: THANK YOU, YOUR HONOR.

9 THE COURT: UNFORTUNATELY, ALL OF MY STICKY NOTES ARE
10 UPSTAIRS, SO I'M GOING TO ASK MS. PARKER BROWN IF YOU HAVE ANY
11 HERE.

12 THE CLERK: I DO. SMALL?

13 THE COURT: THAT'S PERFECT. THAT'S GREAT.

14 MR. SUSSER: MAY I APPROACH, YOUR HONOR?

15 THE COURT: YES, PLEASE. THANK YOU.

16 MR. SUSSER: I'M SORRY. WE MAY HAVE ANOTHER COPY.

17 THE COURT: OKAY. SO -- YOU'RE AT 92?

18 MR. SUSSER: THIS IS WHERE IT STARTS THE DISCUSSION
19 OF LTE.

20 THE COURT: OKAY.

21 MR. SUSSER: AND HE HAS FULL CLAIM CHARTS OF LTE
22 MAPPING ALL OF THE ELEMENTS, INCLUDING NODE, PER YOUR HONOR'S
23 CLAIM CONSTRUCTION.

24 THE COURT: OKAY. SO WHAT PARAGRAPH SPECIFICALLY DO
25 YOU WANT ME TO LOOK AT? BECAUSE I'LL JUST READ THEM RIGHT NOW.

1 MR. SUSSER: THANK YOU, YOUR HONOR.

2 THE COURT: DO YOU WANT TO START AT 90?

3 MR. SUSSER: IF YOU GO TO 105, PAGE 105, THAT APPEARS
4 TO BE -- THERE'S A -- THIS IS CLAIM 39, AND THERE'S A CLAIM
5 ELEMENT, A FIRST NODE, AND DR. DINAN STATES HIS OPINION BASED
6 ON HIS REVIEW OF --

7 THE COURT: THE STANDARD.

8 MR. SUSSER: -- THE STANDARD AND THAT THE
9 ESTABLISHMENT OF CONFORMANCE TESTING BY THIRD PARTIES --

10 THE COURT: WHERE IS THAT IN PARAGRAPH 105?

11 MR. SUSSER: OKAY. IF -- I'M SORRY, YOUR HONOR.
12 I -- IF YOU START BACK UP AT PAGE 99 --

13 THE COURT: OKAY.

14 MR. SUSSER: -- AND WE CAN READ DOWN TO -- WE SEE
15 REFERENCES TO -- IN FACT, AT PARAGRAPH 97, HE SAYS "APPLE LTE
16 DEVICES WERE TESTED AND PASSED CONFORMANCE TESTS ACCORDING TO
17 SECTION 7.1.2.4," AND THAT'S A REFERENCE TO THE CONFORMANCE
18 TESTS.

19 MR. GREEN: YOUR HONOR --

20 MR. SUSSER: THERE'S -- PARAGRAPH 99 IS A REFERENCE
21 TO THE CONFORMANCE TESTS.

22 I -- I WILL SAY THIS, YOUR HONOR, THAT THE ISSUE OF NODE,
23 AS IT RELATES TO LTE, IS NOT ONE THAT THERE'S A CONFORMANCE
24 TEST. IT'S THE SIGNALLING THAT THE DEVICES DO THAT ARE
25 PERFORMED.

1 IN OTHER WORDS, AND WHEN -- YOUR HONOR, WHEN THESE DEVICES
2 ARE TESTED ON --

3 THE COURT: WHY DOES HE SAY LTE ACCUSED DEVICES WERE
4 ASSUMED TO HAVE PASSED --

5 MR. SUSSER: CONFORMANCE --

6 THE COURT: -- CONFORMANCE TESTS IN PARAGRAPH 99 AND
7 100? WHY ARE THEY ASSUMED TO HAVE PASSED?

8 MR. SUSSER: YOUR HONOR, THAT'S BECAUSE DR. DINAN,
9 WHO FROM TIME TO TIME DOES PATENT PROSECUTION FOR HIMSELF, WAS
10 NOT ALLOWED UNDER THE PROTECTIVE ORDER IN THIS CASE.

11 AND SO WHAT GPNE DID WAS TO HIRE ANOTHER EXPERT BY THE
12 NAME OF NEIL BIRKETT AND NEIL BIRKETT WAS ALLOWED, UNDER THE
13 PROTECTIVE ORDER, AND HE DID REVIEW THE CETECOM TESTS AND HE
14 GAVE AN OPINION --

15 THE COURT: THEN WHY DID DR. DINAN, ON PARAGRAPH 97,
16 SAY "APPLE LTE DEVICES WERE TESTED AND PASSED CONFORMANCE
17 TESTS"? SO SOME CONFORMANCE TESTS HE WAS ALLOWED TO SEE AND
18 SOME HE WAS NOT?

19 MR. SUSSER: NO. WE TOLD HIM THAT -- HE -- I BELIEVE
20 HE SPOKE TO DR. BIRKETT AND SAID "I'M GOING TO RELY ON THE FACT
21 THAT THESE HAVE BEEN DONE AND PASSED, EVEN THOUGH I CAN'T SEE
22 THE DOCUMENTS." SO HE'S AN EXPERT RELYING ON ANOTHER EXPERT
23 WHO WAS ALLOWED TO SEE THIS.

24 AND YOUR HONOR MAY NOT KNOW THIS, BUT WE HAD SEVERAL
25 MONTHS OF BATTLE WITH APPLE TO TRY TO GET TWO OTHER EXPERTS IN

1 THE CASE WHO WOULD HAVE PASSED AND APPLE OBJECTED TO THOSE, AND
2 SO WE WENT WITH WHAT WE COULD GET.

3 BECAUSE DR. DINAN COULD NOT SEE THESE, BUT HE WAS ABLE TO
4 LOOK AT THE CONFORMANCE TESTS THAT ACTUALLY PUBLICLY AVAILABLE,
5 WHAT THEY ARE, WHAT THEY DO. SO IF I'M TOLD THIS DEVICE PASSED
6 TEST 123, I CAN GO LOOK AT 123 AND MAKE A CONCLUSION THAT IT
7 ACTUALLY DOES THESE THINGS, EVEN THOUGH I DON'T SEE THE
8 SPECIFIC TEST RESULTS.

9 THE COURT: SO I GUESS I WAS CURIOUS WHY, ON
10 PARAGRAPH 97, HE SAYS THAT APPLE LTE DEVICES WERE TESTED AND
11 PASSED CONFORMANCE TESTS, BUT IN 99, 100, 101, LIKE WHAT -- WHY
12 WAS HE ALLOWED TO SEE THE TESTS IN PARAGRAPH 97, BUT NOT
13 ALLOWED TO SEE THE CONFORMANCE TESTS IN 99, 100 --

14 MR. SUSSEER: HE WAS NOT ALLOWED TO SEE ANY
15 CONFORMANCE -- ANY ACTUAL REPORTS FROM CETECOM. THEY WERE
16 MARKED ATTORNEYS' EYES ONLY. WE DISCUSSED THIS WITH COUNSEL
17 AND MR. GREEN AND MYSELF AT ONE POINT TO TRY TO SEE IF WE COULD
18 WORK OUT ALLOWING HIM TO JUST SEE THE PASS/FAILS AND THEY
19 WOULDN'T LET US TO DO THAT, SO WE HIRED ANOTHER EXPERT TO SAY,
20 "GIVE US A LIST OF THE CETECOM CONFORMANCE TESTING THAT, BY
21 NUMBERS, WHICH ONES WERE PASSED," AND WE GAVE THAT INFORMATION
22 TO DR. DINAN AND SAID "ASSUME THESE TESTS WERE PASSED BECAUSE
23 WE HAVE ANOTHER EXPERT WHO SAID THEY DID."

24 AND SO WHEREVER, WHEREVER DR. DINAN'S EXPERT REPORT
25 IDENTIFIES A CONFORMANCE TEST, HE'S RELYING ON THE EXPERT

1 REPORT OF DR. BIRKETT WHO'S CONCLUDED THAT FROM READING THE
2 VERY DOCUMENTS THEMSELVES.

3 MR. GREEN: YOUR HONOR, I APPRECIATE THAT YOU'RE
4 TRYING TO GET SOME VERY SPECIFIC INFORMATION FROM MR. SUSSER,
5 BUT IF I MAY, I THINK I CAN SHORT CIRCUIT THIS LINE OF
6 QUESTIONING. I DON'T WANT TO INTERRUPT THE CONVERSATION WITH
7 MR. SUSSER, BUT I'D LIKE TO OFFER SOMETHING THAT I THINK WOULD
8 BE HELPFUL.

9 THE COURT: OKAY. GO AHEAD, PLEASE.

10 MR. GREEN: ALL RIGHT. CETECOM TEST REPORTS HAVE
11 NOTHING TO DO WITH THE OPERATING INDEPENDENTLY OF A TELEPHONE
12 NETWORK LIMITATION. ABSOLUTELY NOTHING.

13 THAT'S WHY NONE OF THESE PARAGRAPHS THAT MR. SUSSER HAS
14 IDENTIFIED CONTAIN THE PHRASING "OPERATE INDEPENDENTLY OF A
15 TELEPHONE NETWORK," AND THE REASON CETECOM TEST REPORTS HAVE
16 NOTHING TO DO WITH THAT LIMITATION IS BECAUSE THEY ARE
17 INTEROPERABILITY TESTS FOR CELLULAR TELEPHONE NETWORKS. THEY
18 ARE MANDATED BY THE CARRIERS. AT&T, FOR EXAMPLE, WOULD REQUIRE
19 THAT AN APPLE PRODUCT GO TO ONE OF THESE THIRD PARTY
20 LABORATORIES AND BE TESTED FOR INTEROPERABILITY.

21 IT HAS NOTHING TO DO WITH PAGING SYSTEMS THAT OPERATE
22 INDEPENDENTLY OF A TELEPHONE NETWORK. IT IS THE EXACT
23 OPPOSITE. IT TESTS OPERABILITY WITH THE TELEPHONE NETWORK.
24 THAT'S WHY IT'S NOT THERE.

25 MR. SUSSER: YOUR HONOR, IF I CAN RESPOND TO THAT?

1 MY UNDERSTANDING FROM THE CETECOM REPORTS, THEY EXPLICITLY
2 STATE THAT THE TESTING IS DONE ON NETWORK EMULATORS, LIKE THE
3 EQUIPMENT THAT DR. DINAN USED TO TEST GPRS, WHICH HAVE NO
4 TELEPHONES WHATSOEVER CONNECTED TO THEM, NO TELEPHONE SYSTEM,
5 NO TELEPHONE NETWORK. THEY ARE -- THEY ARE BASED -- THEY ARE A
6 NETWORK EMULATOR JUST MEANT TO SHOW THE LTE SIGNAL PROTOCOL.

7 SO GPNE'S POSITION WOULD BE THAT THE VERY FACT THAT THESE
8 DEVICES, THE VERY FACT THAT THESE DEVICES ARE TESTED BY APPLE'S
9 THIRD PARTY, CETECOM, ON NETWORK EMULATION MACHINES THAT DO NOT
10 HAVE ANY CONNECTION TO A TELEPHONE NETWORK OF ANY KIND IS PROOF
11 POSITIVE THAT THEY'RE OPERATING INDEPENDENTLY, OR THEY ARE
12 PROGRAMMED WITH THE CAPABILITY TO OPERATE INDEPENDENTLY AND
13 SIMILAR TO AND PARALLEL TO WHAT WE ACTUALLY ESTABLISHED WITH
14 ACTUAL TESTS IN THE GPRS EMULATOR WE WERE ABLE TO OBTAIN.

15 MR. GREEN: YOUR HONOR, THAT'S JUST INCORRECT.
16 I'LL -- I'LL ASK FOR YOU TO INDULGE ME TO EXPLAIN WHY, BUT
17 THAT'S WRONG.

18 THE COURT: WHY IS THAT WRONG?

19 MR. GREEN: IT'S WRONG BECAUSE THE THING THAT IS
20 EMULATED IS A CELLULAR TELEPHONE NETWORK BASE STATION. THAT'S
21 THE POINT. THESE THINGS ARE BEING TESTED FOR INTEROPERABILITY
22 WITH A CELLULAR TELEPHONE NETWORK BY MIMICKING CERTAIN FEATURES
23 AND FUNCTIONS OF THAT CELLULAR TELEPHONE NETWORK.

24 IT'S NOT THE ACTUAL PRODUCTION ENVIRONMENT. IF YOU TOOK A
25 PHONE FROM A CETECOM TEST ENVIRONMENT AND ACTUALLY MEASURED ITS

1 PERFORMANCE IN A TELECOM ENVIRONMENT VERSUS WHAT YOU SEE IN AN
2 ACTUAL PRODUCTION IN A COMMERCIAL NETWORK CARRIER ENVIRONMENT,
3 YOU WILL SEE SOME DIFFERENCES PERHAPS.

4 BUT THEY ARE INTENDED TO EMULATE THE SAME THING THAT AN
5 ACTUAL TELEPHONE NETWORK WOULD DO.

6 THIS -- WHAT WE'VE GOTTEN TO HERE VERY EARLY IS THE THEME
7 FOR THE DAY, AND THAT'S REARGUING CLAIM CONSTRUCTION. ALL OF
8 THIS DISCUSSION ABOUT DISABLING TELEPHONE CALL FUNCTIONALITY,
9 TELEPHONE NETWORK FUNCTIONALITY, WE WENT THROUGH ALL THIS IN
10 CLAIM CONSTRUCTION.

11 THE THEORY, THE UNDERLYING THEORY HERE IS THAT IF YOU'RE
12 NOT PICKING UP THE PHONE AND MAKING A PHONE CALL, THEN YOU'RE
13 INDEPENDENT OF A TELEPHONE NETWORK.

14 THAT'S NOT THE CLAIM CONSTRUCTION. WE SPENT A SIGNIFICANT
15 AMOUNT OF TIME AND RESOURCES COMBING THROUGH THE SPECIFICATION,
16 THE FILE HISTORY. THIS IS ADDRESSED AT LENGTH IN YOUR HONOR'S
17 CLAIM CONSTRUCTION ORDER ISSUED LAST AUGUST.

18 THIS IS A COMPLETE REWORK AND REWRITE AND REIMAGINING OF
19 WHAT THE CLAIM CONSTRUCTION IS AND WHAT THE CLAIMS REQUIRE.

20 IT'S SIMPLY -- AS A MATTER OF LOGIC, YOUR HONOR, IT IS
21 IMPOSSIBLE TO PROVE THAT ANY DEVICE OPERATES INDEPENDENTLY FROM
22 A TELEPHONE NETWORK BY TAKING THIS TEST EQUIPMENT THAT EMULATES
23 PARTS, BUT NOT ALL, OF THE TELEPHONE NETWORK AND THEN BEING
24 ABLE TO TRADE SOME SIGNALS WHICH AREN'T EVEN THE SAME SIGNALS
25 THAT YOU WOULD TRADE ON ALL THE TELEPHONE NETWORKS.

1 IT JUST IS AN ALPHABET SOUP OF POINTS THAT REALLY DON'T
2 ADD UP TO THE CONCLUSION.

3 THE COURT: ALL RIGHT. AND WOULD THAT SAME ARGUMENT
4 APPLY TO DR. DINAN'S EMULATION TESTS WITH RESPECT TO GPRS?

5 MR. GREEN: ABSOLUTELY, AND IT IS ADDRESSED IN THE
6 DAUBERT MOTION AND THE MOTION TO STRIKE, YOUR HONOR. THAT IS A
7 PROBLEM OF, A FUNDAMENTAL AND THRESHOLD PROBLEM WITH THAT
8 EVIDENCE THAT GPNE WANTS TO OFFER.

9 AND I JUST -- IT JUST DOESN'T MAKE ANY SENSE, AGAIN, THAT
10 DR. DINAN IS GOING TO DO THIS FOR GPRS AND NOT LTE. I CAN
11 ASSURE YOU THAT THERE IS NO EVIDENCE IN THE RECORD THAT TESTING
12 LTE EQUIPMENT COSTS A MILLION DOLLARS. I THINK IT'S MORE LIKE
13 12 OR 15. THAT'S -- ONE OF OUR ASSOCIATES LOOKED THAT UP THIS
14 MORNING AND FOUND IT, FROM THE VERY SAME COMPANY THAT GPNE USED
15 TO RENT THE OTHER TEST EQUIPMENT, FOR \$14,000.

16 MR. SUSSEER: I --

17 THE COURT: HOW MUCH DID IT COST TO RENT THE
18 EQUIPMENT TO TEST THE GPRS?

19 MR. SUSSEER: IT WAS 20, 25, SOMETHING LIKE THAT. WE
20 SPECIFICALLY LOOKED FOR THIS, AND THERE'S NO REASON WHY WE
21 WOULDN'T DO IT IF IT WAS AVAILABLE FOR THAT PRICE, YOUR HONOR.

22 BUT REALLY QUICKLY, WHAT -- MR. GREEN'S ARGUMENT IS THAT A
23 SINGLE BOX THAT'S THIS BIG THAT'S NOT CONNECTED TO ANY
24 TELEPHONE PSTN, HARD LINE OR RADIO FREQUENCY LINE THAT HAS NO
25 TELEPHONE, NO VOICE, HE'S SAYING THAT'S NOT A DATA NETWORK

1 BECAUSE IT EMULATES THE ACTUAL GPRS OR LTE NETWORK WHICH THEY
2 SAY IS A TELEPHONE NETWORK.

3 THE TESTS THEMSELVES ARE NOT ON A TELEPHONE NETWORK.

4 HE'S JUST SAYING THIS DOESN'T COUNT BECAUSE IT EMULATES
5 THE LARGER COMMERCIAL NETWORK. SO THIS IS JUST HIS ARGUMENT
6 THAT THE COMMERCIAL NETWORK IS NOT A SEPARATE DATA NETWORK FROM
7 A SEPARATE -- OPERATING INDEPENDENTLY FROM A TELEPHONE NETWORK.

8 THE EMULATION TESTS, WHETHER THE ONES DR. DINAN DID OR THE
9 ONES APPLE DID WITH CETECOM, ARE ALL ON A BOX, A COMPUTER BOX
10 THAT HAS NOTHING TO DO WITH TELEPHONES. THERE'S NO TELEPHONES
11 HOOKED UP. YOU CAN'T MAKE A PHONE CALL ON IT. IT EMULATES THE
12 REAL NETWORK, AND THE FACT THAT YOU CAN RUN DATA COMMUNICATIONS
13 ON THESE BOXES, ON THESE EMULATORS, DO ALL OF THIS SIGNALLING
14 IN GPRS AND LTE WITHOUT ANY TELEPHONE NEARBY THAT'S WORKING,
15 CONNECTING, NO VOICE, SHOWS THAT WHEN YOU -- THAT IN THE REAL
16 NETWORK, YOU'RE DOING THE SAME THING.

17 YOU'RE DOING DATA COMMUNICATIONS, YOU'RE SENDING BACK AND
18 FORTH SIGNALS, BUT YOU'RE NOT RELYING ON ANY PURE TELEPHONE
19 NETWORK RESOURCES.

20 AND THIS IS WHAT WE'VE BRIEFED. THERE'S A SHARING OF
21 CERTAIN RESOURCES BETWEEN THE TWO NETWORKS, THE GPRS NETWORK
22 THAT'S ON TOP OF -- THAT CAME AFTER THE GSM NETWORK, BUT WHEN
23 THE GPRS NETWORK IS WORKING, JUST LIKE WHEN THE LTE NETWORK IS
24 WORKING, WHEN IT'S OPERATING, TO USE YOUR TERM IN THE MARKMAN,
25 OPERATIONALLY, IT'S NOT USING ANY RESOURCES THAT ARE DEDICATED

1 TO TELEPHONES.

2 IT'S NOT MERELY THAT IT'S NOT MAKING A TELEPHONE CALL. WE
3 KNOW THAT THAT'S NOT WHAT YOU MEANT, THAT SOMEBODY IS PICKING
4 UP A TELEPHONE AND MAKING A CALL.

5 IT'S NOT USING ANY RESOURCES THAT ARE PURELY TECHNICAL TO
6 TELEPHONE LINES.

7 THE FACT THAT YOU CAN DO ALL OF THIS GPRS PROTOCOL AND ALL
8 OF THIS LTE PROTOCOL ON AN EMULATION MACHINE THAT APPLE AND ITS
9 CERTIFIERS USE PROVES THAT WHEN THE SAME THING IS HAPPENING ON
10 THE REAL NETWORKS, IT'S DOING THE SAME THING. IT'S NOT
11 COMMUNICATING ON SOMETHING THAT'S PURELY A TELEPHONE NETWORK.

12 MR. GREEN: YOUR HONOR, IF I MAY, I'D LIKE TO GO BACK
13 AND NOT, YOU KNOW, PARAPHRASE WHAT YOUR CONSTRUCTION IS AND NOT
14 SPECULATE ABOUT WHAT YOUR CONSTRUCTION WAS AND WHAT'S DESCRIBED
15 IN YOUR ORDER. THE ACTUAL CONSTRUCTION IS, "PAGER WITH TWO-WAY
16 DATA COMMUNICATIONS CAPABILITY THAT TRANSMITS WIRELESS DATA
17 COMMUNICATIONS ON A PAGING SYSTEM THAT OPERATES INDEPENDENTLY
18 FROM A TELEPHONE NETWORK."

19 IF MR. SUSSEER OR GPNE HAD COME OUT WITH AN EMULATOR OF A
20 PAGING SYSTEM AND THE VERY SAME STANDARDS ORGANIZATION, THE
21 GOVERNMENTAL ENTITIES THAT REGULATE TELECOMMUNICATIONS IN
22 GENERAL, THEY TELL US WHAT PAGING NETWORKS ARE, HOW THEY WORK,
23 WHAT KINDS OF ARCHITECTURE, WHAT FREQUENCY BAND, WHAT
24 THROUGHPUT YOU HAVE FOR PAGING SYSTEMS, IF MR. SUSSEER AND HIS
25 EXPERT HAD EMULATED ONE OF THOSE PAGING NETWORKS, ONE OF THOSE

1 PAGING SYSTEMS, THEN WE MIGHT HAVE SOMETHING TO TALK ABOUT.

2 BUT I'M AT A LOSS TO EXPLAIN HOW AN EMULATOR AND A PIECE
3 OF EQUIPMENT THAT IS DESIGNED TO MIMIC AN ACTUAL CELLULAR
4 TELEPHONE NETWORK, INCLUDING THE RESOURCES THAT THE GPRS
5 PROTOCOL -- AND IT'S A PROTOCOL, IT'S A PIECE OF FUNCTIONALITY,
6 IT'S NOT A FREE-STANDING NETWORK -- IF I AM MIMICKING THAT WITH
7 THIS PIECE OF TEST EQUIPMENT, THAT DOES NOTHING TO PROVE THE
8 REQUIREMENT THAT IS IN YOUR HONOR'S CONSTRUCTION THAT YOU
9 ARRIVED AT AFTER MUCH DEBATE, PAGING SYSTEM, PAGING SYSTEM,
10 THAT OPERATES INDEPENDENTLY FROM A TELEPHONE NETWORK.

11 MR. SUSSE: YOUR HONOR --

12 MR. GREEN: NOT NO PHONE CALL, NOT ABSENCE OF A
13 TELEPHONE CALL, NOT TELEPHONE NETWORK RESOURCE THAT'S NOT BEING
14 USED AT THIS TIME. NONE OF THAT IS IN THE CLAIM CONSTRUCTION
15 ORDER, YOUR HONOR.

16 MR. SUSSE: SO MR. GREEN IS MAKING THE ARGUMENT THAT
17 HE'S MADE IN HIS BRIEF THAT PAGING SYSTEMS OUT IN THE WORLD ARE
18 DISTINGUISHED FROM TELEPHONE CELLULAR NETWORKS, SO IF YOU LOOK
19 CLOSELY AT EVERYTHING THEY SAY IN THEIR BRIEF, THERE'S THE
20 HURRICANE KATRINA FCC PAPER, THIS BAND IN THE EUROPEAN SYSTEM,
21 AND THIS ETSI DOCUMENT, ALL OF THESE DOCUMENTS DISTINGUISH
22 PAGING SYSTEMS AT DIFFERENT TIMES FROM CELLULAR NETWORKS, NOT
23 FROM TELEPHONES, FROM CELLULAR NETWORKS.

24 BUT WHAT APPLE DOESN'T SHOW YOU IS THAT FIGURE 9 OF THE
25 GPNE PATENT SHOWS THAT THIS IS A CELLULAR NETWORK. THEY'RE

1 TRYING TO READ OUT OF THE GPNE PATENT CLAIMS, AS YOU'VE
2 CONSTRUED THEM, THE POSSIBILITY THAT THIS DEVICE CAN WORK ON A
3 CELLULAR NETWORK. YOU HEAR HIM SAYING IT OVER AND OVER AGAIN,
4 THAT THE NETWORK EMULATION MACHINES --

5 MR. GREEN: NO.

6 MR. SUSSER: -- EMULATE A CELLULAR NETWORK.

7 MR. GREEN: NO.

8 MR. SUSSER: NOW, YOUR HONOR, JUST REAL QUICK --

9 CHRIS, I'LL BE DONE IN A SECOND.

10 MR. GREEN: THAT'S ALL RIGHT. THANK YOU.

11 MR. SUSSER: YOUR HONOR MADE IT VERY CLEAR OVER AND
12 OVER AGAIN, THE NODE CAN BE A TELEPHONE. THE NODE CAN
13 COMMUNICATE OVER A TELEPHONE SYSTEM. THE NODE CAN USE A PAGING
14 SYSTEM THAT CAN INTERACT WITH A TELEPHONE SYSTEM. THE NODE CAN
15 SEND DATA OVER A TELEPHONE SYSTEM.

16 THE PATENT, FIGURE 9 AND THE ASSOCIATED TEXT, SPECIFICALLY
17 SAY THAT THE INVENTORS ENVISIONED A CELLULAR SYSTEM WITH
18 MULTIPLE CELLS AND THERE'S CELL SWITCHING.

19 SO IF YOU LOOK AT ALL OF THE DISTINGUISHING
20 CHARACTERISTICS THAT APPLE'S BRIEF DID, THEY'RE TRYING TO UNDO
21 ALL OF THAT WORK YOU DID BY SAYING, NO, IF THERE'S ANY
22 TELEPHONE CELLULAR SYSTEM INVOLVED ANYWHERE, IT'S OUTSIDE THE
23 CLAIMS.

24 BUT THAT'S NOT TRUE BECAUSE WHAT THEY INVENTED WAS A
25 CELLULAR SYSTEM, AND WE DO KNOW THAT A PAGE -- THAT WHAT YOU

1 HAVE CALLED AS A PAGER, WHAT YOU'VE DEFINED AS A PAGER ITSELF
2 IS NOT A TELEPHONE.

3 BUT YOU'VE EXPRESSLY ALLOWED INTERACTION BETWEEN THE
4 SYSTEMS, AND WHAT I THINK -- GETTING BACK TO WHERE WE REALLY
5 ARE, IT'S A SUMMARY JUDGMENT MOTION AND A RULE 56, WE HAVE,
6 THROUGH DR. DINAN AND THROUGH TENS OF THOUSANDS OF PAGES OF
7 DATA AND EVIDENCE, SHOWN THERE'S AT LEAST A GENUINE ISSUE OF
8 MATERIAL FACT AS TO WHETHER THE SHARING OF SOME RESOURCES, BUT
9 HAVING A TON OF DIFFERENT HARDWARE AND SOFTWARE BETWEEN THESE
10 NETWORKS, IS ENOUGH TO SAY THAT THEY OPERATE INDEPENDENTLY.

11 YOU SAID THAT THEY COULD HAVE INTERACTION AND THE PATENT
12 SAYS THEY HAVE AN INTERACTION.

13 WHAT WE SAY IS THAT -- AND THIS IS WHAT THE EMULATIONS
14 PROVE -- WHEN IT'S OPERATING, WHEN IT'S DOING ONE THE THINGS OF
15 THE PATENT CLAIMS, IT'S NOT USING TELEPHONE RESOURCES, AND SO
16 IT OPERATES INDEPENDENTLY, AND THAT'S THE THRUST OF OUR
17 INFRINGEMENT CASE.

18 AND I THINK, UNDER THE CONSTRUCTION, WE'VE MADE MORE THAN
19 A COMPELLING SHOWING THAT THERE'S AT LEAST A GENUINE ISSUE OF
20 MATERIAL FACT FOR THE JURY TO DECIDE WHETHER THEY'RE
21 INDEPENDENT ENOUGH.

22 AND THAT'S WHERE WE THINK THIS SHOULD BE DENIED.

23 MR. GREEN: YOUR HONOR, IF I MAY, I'M GOING TO GO
24 BACK TO FIRST PRINCIPLES, AND THAT IS WHEN WE STARTED DOWN THIS
25 ROAD OF CONSTRUING THE TERM "NODE," BOTH PARTIES AGREED THAT IT

1 WAS CASE DISPOSITIVE. IT WAS A CASE DISPOSITIVE TERM.

2 WE CAME OUT WITH A CONSTRUCTION THAT I JUST READ TO YOUR
3 HONOR WHICH REQUIRES A PAGER, A PARTICULAR KIND OF DEVICE ON A
4 PARTICULAR KIND OF NETWORK, A PAGING SYSTEM, AND THAT THE
5 PARTICULAR SYSTEM, THE PAGING SYSTEM, OPERATE INDEPENDENTLY
6 FROM A TELEPHONE NETWORK.

7 AND AGAIN, YOUR HONOR, I'M NOT GOING TO DO MY BEST
8 PARAPHRASING OF YOUR ORDER, I'M GOING TO READ EXACTLY FROM
9 PAGE 12 OF YOUR CLAIM CONSTRUCTION ORDER. IT TELLS US THE
10 FOLLOWING: "THUS, THE SPECIFICATION SUPPORTS THE CONCLUSION
11 THAT THE TERM 'PAGER' DOES NOT SIMPLY REFER TO A DEVICE IN A
12 NETWORK, BUT RATHER TO A DEVICE DESIGNED TO OPERATE IN A
13 PARTICULAR KIND OF SYSTEM. CONSEQUENTLY, AN ACCURATE
14 CONSTRUCTION OF NODE SHOULD DISCLOSE THAT THE NODE IS A TYPE OF
15 PAGER AND NOT MERELY A DEVICE IN A NETWORK."

16 AND THERE ARE STILL MORE AND NUMEROUS OTHER STATEMENTS OF
17 THAT KIND AFTER YOUR HONOR GAVE THOROUGH CONSIDERATION TO THE
18 INVENTOR'S STATEMENTS AND PROSECUTION HISTORY, THE
19 SPECIFICATION, THE TESTIMONY OF GPNE'S OWN EXPERT, DR. DINAN,
20 THE VERY SAME EXPERT WHO'S NOW OFFERING THE OPINION THAT GPNE
21 IS HAVING A LITTLE TROUBLE LOCATING, HE OFFERED TESTIMONY THAT
22 CONFIRMED THAT PAGERS AND OTHER DEVICES, NOT JUST CELLULAR
23 TELEPHONES, PAGERS AND OTHER DEVICES ARE DIFFERENT, PAGING
24 SYSTEMS AND OTHER NETWORKS ARE DIFFERENT.

25 AGAIN RETURNING TO YOUR HONOR'S CLAIM CONSTRUCTION,

1 DR. DINAN'S TESTIMONY CONFIRMED THAT THE NODE IS A TYPE OF
2 PAGER. THE COURT IS NOT PERSUADED THAT THE ADDITION OF
3 TRANSMITTING FUNCTIONALITY, THE ADDITION OF TRANSMITTING
4 FUNCTIONALITY, MEANING CHANGING THIS FROM A ONE-WAY PAGER TO A
5 PAGER THAT COMMUNICATES IN TWO DIRECTIONS, SOMEHOW MAKES IT
6 SOMETHING OTHER THAN A PAGER. IT'S STILL A PAGER.

7 IF GPNE HAS INVENTED ANYTHING, THAT'S WHAT IT IS, THIS
8 ENHANCED PAGER DEVICE THAT OPERATES ON PAGING SYSTEMS, PAGING
9 SYSTEMS BEING INDEPENDENT OF A TELEPHONE NETWORK.

10 AND THERE'S NO EVIDENCE IN THIS OPPOSITION, THERE'S NO
11 EVIDENCE IN THE RECORD TO SHOW THAT APPLE DEVICES OPERATE ON A
12 PAGING SYSTEM, THE PAGING SYSTEM BEING DEFINED AS A NETWORK
13 THAT CAN OPERATE INDEPENDENTLY OF A TELEPHONE NETWORK.

14 GPNE ADMITS THIS THROUGHOUT. THERE ARE SHARED RESOURCES.
15 WHEN YOU HAVE THE GPRS FUNCTIONALITY OR THE LTE FUNCTIONALITY
16 THAT IS ACCUSED OF INFRINGEMENT IN THIS CASE, THEY DO NOT WORK,
17 THEY DON'T WORK WITHOUT THOSE UNDERLYING TELEPHONE NETWORK
18 COMPONENTS BECAUSE THEY'RE NOT FREESTANDING. THEY ARE
19 EXTENSIONS OF THE TELEPHONE NETWORK. THEY'RE NOT SEPARATE.
20 THEY'RE NOT INDEPENDENT. THERE'S NO DEBATE ABOUT THAT.

21 I APPRECIATE WHAT MR. SUSSER IS TRYING TO DO. HE'S TRYING
22 TO, VERY AGGRESSIVELY, PURSUE THIS NOTION THAT WE CAN BACK AWAY
23 FROM THE CONSTRUCTION, HE -- THAT WE CAN JUST RECONFIGURE WHAT
24 THE PAGER MEANS, WE CAN REIMAGINE WHAT A PAGING SYSTEM IS
25 BECAUSE THEY HAVE TO DO SOMETHING.

1 THIS CLAIM CONSTRUCTION IS CASE DISPOSITIVE AND WE'VE BEEN
2 UP FRONT ABOUT THAT WITH YOUR HONOR FROM THE BEGINNING.

3 MR. SUSSER: IT WAS CASE DISPOSITIVE, YOUR HONOR,
4 FROM --

5 THE COURT: I'D LIKE TO MOVE ON.

6 MR. SUSSER: THANK YOU, YOUR HONOR.

7 THE COURT: SO IS THE IDENTITY OF THE SMALLEST
8 SALEABLE PATENT PRACTICING UNIT, IS THAT A QUESTION OF LAW OR A
9 QUESTION OF FACT?

10 MR. SUSSER: YOUR HONOR, MS. PEDEN IS GOING TO ARGUE
11 THAT.

12 THANK YOU, YOUR HONOR.

13 THE COURT: CAN I JUST ASK, WHY DO THE PLAINTIFFS
14 HAVE FIVE LAW FIRMS, OR SIX LAW FIRMS NOW?

15 MR. SUSSER: DO WE HAVE FIVE? WELL, MS. PEDEN AND
16 HER FIRM ARE TAKING OVER AS LOCAL AND CO-COUNSEL, SO
17 GARTEISER HONEA FIRM ARE LEAVING. IS THERE ANOTHER ONE THAT
18 I'M MISSING?

19 THE COURT: SO GARTEISER HONEA NO LONGER IS GOING TO
20 BE YOUR LOCAL COUNSEL?

21 MR. SUSSER: THEY WERE OUR LOCAL AND NOW PATTY IS OUR
22 LOCAL AND CO-COUNSEL. SHE'S A PATENT LITIGATOR. SHE'S GOING
23 TO HELP US.

24 THE COURT: I SEE. ARE THEY GOING TO WITHDRAW?

25 MR. SUSSER: THEY CAN. I DIDN'T ASK THEM TO YET, BUT

1 I CAN IF YOUR HONOR WANTS ME TO.

2 THE COURT: NO, NO, I DON'T HAVE ANY PREFERENCE. I
3 WAS JUST CURIOUS. THAT'S ALL.

4 MR. SUSSER: THEY'VE BEEN INVOLVED IN THE CASE. HE
5 WANTED TO KEEP TRACK OF WHAT'S GOING ON.

6 THE OTHER LAWYER -- THE OTHER FIRM, I GUESS, IS THE HAWAII
7 FIRM THAT WAS INVOLVED WHEN WE WERE STILL IN HAWAII.

8 THE COURT: I SEE.

9 MR. SUSSER: THE LOCAL COUNSEL IN HAWAII, YOUR HONOR.

10 THE COURT: OKAY.

11 MR. SUSSER: THANK YOU, YOUR HONOR.

12 THE COURT: NO, I THINK THE LOCAL COUNSEL IN HAWAII,
13 THEY'VE ALREADY LONG WITHDRAWN FROM THE CASE. I DON'T THINK
14 THEY EVER -- I DON'T THINK THEY EVER MADE AN APPEARANCE HERE,
15 THE HAWAII COUNSEL DIDN'T. IT'S JUST BEEN THE FOUR.

16 OKAY.

17 MS. PEDEN: GOOD AFTERNOON, YOUR HONOR.

18 PATRICIA PEDEN REPRESENTING GPNE.

19 AND AS TO YOUR HONOR'S QUESTION ABOUT WHETHER OR NOT THE
20 SMALLEST SALEABLE PATENT PRACTICING UNIT IS A QUESTION OF LAW
21 OR FACT, IT IS A QUESTION OF FACT. THE CASE SUPPORT FOR THAT
22 IS THE BROADCOM CORP. CASE, AS WELL AS STRYKER CORP., AND BOTH
23 OF THOSE CASES ARE CITED IN OUR BRIEF.

24 MR. MUELLER: YOUR HONOR, IF I MAY RESPOND?

25 THE COURT: MAYBE MY QUESTION WAS NOT PRECISE. ARE

1 YOU -- IS IT A QUESTION OF LAW WHETHER THAT'S EVEN -- WELL, GO
2 AHEAD.

3 MR. MUELLER: SURE, YOUR HONOR. JOE MUELLER ON
4 BEHALF OF APPLE.

5 THERE'S A QUESTION OF LAW AND A QUESTION OF METHODOLOGY,
6 AND ALSO A QUESTION OF FACT, AND IF I COULD DISTINGUISH THE
7 TWO.

8 THE PARTIES ARE DIVIDED ON A QUESTION OF LAW THAT RELATES
9 TO HOW TO CONDUCT AN ANALYSIS OF THE SMALLEST SALEABLE PATENT
10 PRACTICING UNIT, AND IT'S A FUNDAMENTAL QUESTION THAT GOES TO
11 THE METHODOLOGIES USED BY THE RESPECTIVE DAMAGES EXPERTS.

12 I THINK THAT ON THAT QUESTION OF LAW, AND I'LL GET TO THAT
13 IN JUST A MOMENT, IT CLEARLY IS ONE OF LAW.

14 BUT ONCE DECIDED, THERE'S THE FURTHER FACTUAL QUESTION AS
15 TO WHAT DOES THAT MEAN IN THE CONTEXT OF TECHNOLOGY IN THIS
16 CASE, AND THAT'S A QUESTION OF FACT.

17 BUT THE FIRST PLACE TO BEGIN, THE THRESHOLD QUESTION IS,
18 HOW DOES ONE CONDUCT AN INQUIRY LIKE THIS?

19 AND THERE'S A DISAGREEMENT ON THAT ISSUE. THE CASE LAW IS
20 QUITE CLEAR. THE CASE LAW SAYS THAT A DAMAGES EXPERT MUST LOOK
21 TO THE COMPONENT THAT IS MOST CLOSELY TIED TO THE ALLEGED
22 INVENTION.

23 AND THERE'S A STRING OF CASES THAT WE CITED TO YOUR HONOR
24 OVER THE LAST FEW YEARS FROM THE FEDERAL CIRCUIT THAT MAKE
25 QUITE CLEAR THAT THERE'S A RIGOROUS REQUIREMENT THAT THE

1 CLOSEST COMPONENT TO THE ALLEGED INVENTION IS THE PLACE TO
2 FOCUS.

3 NOW, THAT COMPONENT MAY BE OVERINCLUSIVE. THERE MAY BE
4 PARTS IN THAT COMPONENT THAT HAVE NOTHING TO DO WITH THAT
5 INVENTION AND YOU HAVE TO APPORTION THAT COMPONENT TO ARRIVE
6 MORE PRECISELY AT THE VALUE OF THE ALLEGED INVENTION.

7 BUT THE PURPOSE OF THE SMALLEST SALEABLE COMPONENT TEST IS
8 TO BRING US CLOSER TO THE VALUE OF THE ALLEGED INVENTION.

9 AND SO THAT'S WHAT THE CASES SAY. IT SAYS YOU TAKE THE
10 PRODUCTS AT ISSUE IN THE CASE AND THEN YOU LOOK WITHIN THEM TO
11 FIND THE COMPONENT THAT IS MOST CLOSELY TIED TO THE ALLEGED
12 INVENTION. THAT'S WHAT THE LAW REQUIRES.

13 NOW, GPNE AND ITS EXPERT HAVE INTERPRETED THIS LAW IN A
14 WAY THAT IS, RESPECTFULLY, INCORRECT, AND THEY HAVE SAID THAT
15 THE SMALLEST SALEABLE COMPONENT TEST IS LIMITED TO THE SET OF
16 PRODUCTS THAT ARE SOLD BY THE DEFENDANT.

17 SO IN A CASE WHERE THE PRODUCTS ARE APPLE PRODUCTS, WHAT
18 THAT WOULD MEAN IS THE SMALLEST SALEABLE COMPONENT COULD ONLY
19 BE THE IPHONE, THE IPAD, OR OTHER PRODUCTS SOLD BY APPLE
20 BECAUSE APPLE DOESN'T SELL, FOR EXAMPLE, CHIPS. APPLE DOESN'T
21 SELL CAMERA COMPONENTS THAT GO INTO PHONES. APPLE SELLS THE
22 END DEVICE.

23 AND THAT'S JUST WRONG. YOU'RE NOT LIMITED TO THE SET OF
24 PRODUCTS THAT ARE SOLD BY THE DEFENDANT. THE WHOLE POINT OF
25 THESE CASES THAT THE FEDERAL CIRCUIT HAS ISSUED IS THAT YOU

1 HAVE TO GO FURTHER AND LOOK WITHIN THOSE PRODUCTS, ESPECIALLY
2 IN COMPLICATED ELECTRONICS DEVICES, TO IDENTIFY THE COMPONENT
3 THAT IS MOST CLOSELY TIED TO THE ALLEGED INVENTION.

4 AND AS I MENTIONED, YOU MAY NEED TO GO EVEN FURTHER AND
5 APPORTION THE VALUE OF THAT COMPONENT TO ARRIVE AT THE, AT A
6 MORE PRECISE APPROXIMATION OF THE VALUE OF THE PARTICULAR
7 INVENTION.

8 BUT THE FIRST STEP IS TO GO WITHIN THE DEVICE AND DEFINE
9 THE COMPONENT THAT'S MOST CLOSELY TIED, AND THAT ISSUE AS TO
10 WHO IS RIGHT AND WHO IS WRONG AS TO HOW THIS SORT OF INQUIRY
11 SHOULD BE CONDUCTED IS A QUESTION OF LAW.

12 AND GPNE'S DAMAGES EXPERT HAS USED AN INCORRECT CONCEPTION
13 OF THE LAW AND HAS TAKEN THE VIEW THAT THE INQUIRY ENDS AT THE
14 SET OF PRODUCTS SOLD BY THE DEFENDANT, IN THIS CASE THE IPAD
15 AND THE IPHONE.

16 THAT'S WRONG, AND THAT'S A METHODOLOGICAL PROBLEM WITH HIS
17 REPORT. IT'S ONE OF THE TWO GROUNDS FOR OUR OWN DAUBERT
18 MOTION.

19 SO THE ANSWER TO YOUR HONOR'S QUESTION IS THERE'S AN ISSUE
20 OF LAW ON WHICH THE PARTIES DISAGREE; AND THEN ONCE THAT'S
21 RESOLVED, THERE COULD BE A FURTHER FACTUAL QUESTION, BUT WE
22 THINK THE DAMAGES ISSUES IN THIS CASE ACTUALLY CAN BE DECIDED
23 AT THE FIRST STAGE, THE ISSUE OF LAW.

24 THE COURT: LET ME ASK MS. PEDEN -- DID I PRONOUNCE
25 THAT CORRECTLY?

1 MS. PEDEN: YES, YOUR HONOR.

2 THE COURT: -- IF YOU ALWAYS LIMIT IT TO THE PRODUCT
3 THAT THE DEFENDANT SELLS, THEN WOULDN'T WE ALWAYS BE GETTING
4 INTO TENSION WITH THE ENTIRE MARKET VALUE RULE AND THE WHOLE
5 PRODUCT IN THIS CASE? THEY'RE SAYING DEFENDANT ONLY SELLS THE
6 FINAL PHONE OR TABLET.

7 MS. PEDEN: WELL, I THINK THAT ARGUMENT EVIDENCES A
8 MISUNDERSTANDING OF THE APPROACH THAT MR. DANSKI USED. APPLE'S
9 POSITION HAS -- IS BASED ON THE ANALYSIS THAT WOULD GO INTO A
10 MORE TRADITIONAL DAMAGES ASSESSMENT WHERE YOU HAVE -- YOU
11 DETERMINE A ROYALTY BASE AND THEN YOU APPLY A ROYALTY RATE TO
12 THAT BASE.

13 THAT IS NOT THE ONLY DAMAGES METHODOLOGY THAT IS
14 ACCEPTABLE, AND IN FACT, THE FEDERAL CIRCUIT HAS REPEATEDLY,
15 SINCE 1986, APPROVED OF AN ANALYTICAL APPROACH TO DAMAGES.

16 SO THE WAY MR. DANSKI GOES ABOUT IDENTIFYING AND ISOLATING
17 AND APPORTIONING THE THING THAT IS COVERED BY THE PATENTS IS
18 DIFFERENT THAN THE WAY APPLE WOULD PREFER THAT IT BE DONE.

19 THE WAY MR. DANSKI DOES IT IS HE STARTS BY TAKING TWO
20 COMPARABLE PRODUCTS THAT DIFFER ONLY IN THE FUNCTIONALITY THAT
21 IS COVERED BY THE PATENTS, SO HE TAKES AN IPAD THAT HAS WI-FI
22 AND HE COMPARES IT TO AN IPAD THAT HAS WI-FI AND CELLULAR.

23 HE TAKES THOSE TWO PRODUCTS AND DETERMINES WHAT THE PROFIT
24 PREMIUM APPLE GETS FROM SELLING THE IPAD WITH THE CELLULAR
25 FUNCTIONALITY IS, AND HE SAYS THAT THAT PRICE PREMIUM IS \$168.

1 THEN HE DEDUCTS OUT THE COST FOR PRODUCING THE IPAD AND HE
2 COMES UP WITH AN INCREMENTAL MARGIN OF \$94.

3 FROM THE \$94, HE DEDUCTS THE \$8.20 THAT APPLE HAS TO PAY
4 FOR CURRENT ROYALTY OBLIGATIONS, AND HE COMES TO A PRICE OF
5 \$86. \$86 IS THE END PROFIT THAT APPLE MAKES BY HAVING CELLULAR
6 FUNCTIONALITY IN THESE TWO DIFFERENT PRODUCTS.

7 SO BECAUSE HE HAS DONE THIS ANALYTICAL METHOD AND HAS
8 FILTERED OUT EVERYTHING BUT THE PATENTED TECHNOLOGY, HE HAS
9 ALREADY ISOLATED THE VALUE OF THAT.

10 THERE IS NO -- AND I THINK THE CASE LAW IS CLEAR ON THIS
11 POINT. WHEN YOU DO THIS PER UNIT APPORTIONMENT THIS WAY, YOU
12 DON'T EVEN GET TO THE ENTIRE MARKET VALUE RULE. IT DOESN'T
13 APPLY.

14 MR. MUELLER: TWO RESPONSES, YOUR HONOR.

15 THE COURT: OKAY.

16 MR. MUELLER: FIRST, I DON'T THINK I HEARD AN ANSWER
17 TO YOUR QUESTION. IT WOULD, IN FACT, VITIATE THE ENTIRE MARKET
18 VALUE CASE LAW IF GPNE'S POSITION WERE CORRECT.

19 IF YOU WERE ALWAYS LIMITED TO THE SET OF PRODUCTS SOLD BY
20 THE DEFENDANT, THOSE CASES WOULDN'T MAKE ANY SENSE.

21 AND JUST TO BE CLEAR, THIS IS A DIRECT QUOTE, IT'S AT
22 PAGE 5 FROM OUR OPENING BRIEF, A DIRECT QUOTE FROM THE DAMAGES
23 EXPERT'S DEPOSITION.

24 "QUESTION: YOUR VIEW OF THE SMALLEST SALEABLE UNIT CASE
25 LAW IS THAT THE RELEVANT UNIT MUST BE SOMETHING SOLD BY THE

1 DEFENDANT IN THAT CASE?

2 "ANSWER: THAT'S CORRECT. FOR IT TO BE THE ROYALTY BASE,
3 IT HAS TO BE SOMETHING THAT THE COMPANY -- THAT THE DEFENDANT
4 ACTUALLY SOLD."

5 THAT'S WRONG.

6 MS. PEDEN: YOUR HONOR --

7 MR. MUELLER: THAT'S NOT THE LAW, THAT'S AN INCORRECT
8 CONCEPTION OF LAW, AND IT CREATES A METHODOLOGICAL PROBLEM WITH
9 THE ANALYSIS CONDUCTED BY THE EXPERT. SO THAT'S POINT ONE.

10 POINT TWO: THAT ANALYTICAL APPROACH HAS A SEPARATE
11 INDEPENDENT DEFECT, AND THIS IS THE SECOND ARGUMENT IN OUR
12 BRIEF, YOUR HONOR, THIS ISOLATION, SO-CALLED, OF THE DIFFERENCE
13 BETWEEN THE CELLULAR IPADS AND THE NON-CELLULAR IPADS THAT WAS
14 CONDUCTED BY GPNE'S EXPERT HAS A MATH ERROR IN IT, THAT'S THE
15 FIRST POINT, AND THAT ALONE MIGHT BE GROUNDS FOR
16 CROSS-EXAMINATION AS TO A DAUBERT CHALLENGE.

17 BUT HERE'S THE DAUBERT PROBLEM: THIS DIFFERENCE THAT HAS
18 BEEN ALLUDED TO, THIS \$86 DIFFERENCE AS CALCULATED BY THE
19 EXPERT IS NOT THE ROYALTY REQUEST. THE ROYALTY REQUEST IS A
20 DOLLAR.

21 AND THE QUESTION IS WHAT --

22 THE COURT: DO YOU ALL NOT WANT ME TO SEAL THIS?

23 MR. MUELLER: I'M SORRY?

24 THE COURT: EVERYONE IS THROWING OUT THE \$86 NUMBER
25 AND THE \$1.

1 MR. MUELLER: THIS IS JUST THEIR DAMAGES REQUEST.
2 YOU TELL ME.

3 MS. PEDEN: WE'RE FINE.

4 MR. SUSSER: WE DON'T GET TO THE TOTAL PRICE AT THIS
5 POINT.

6 THE COURT: OKAY. BUT I THOUGHT THAT THE 86 WAS THE
7 PROFIT.

8 MR. MUELLER: NO, YOUR HONOR. THAT'S NOT WHAT APPLE
9 WOULD AGREE IS ANY SORT OF PROFIT MARGIN.

10 TO BE CLEAR, THIS IS THE ANALYSIS OF THE EXPERT WHICH WE
11 THINK IS WRONG.

12 THE COURT: ALL RIGHT. BUT THAT'S NOT --

13 MR. MUELLER: SO ALL THIS MEANS IS THIS IS THE GPNE
14 DAMAGES EXPERT FIGURE. WE DON'T ENDORSE IT IN ANY WAY. WE
15 DON'T THINK IT REFLECTS ANY CONFIDENTIAL APPLE INFORMATION.

16 THE COURT: OKAY. I THOUGHT THAT'S WHAT THE GPNE
17 EXPERT SAYS IS THE PROFIT WAS \$86, AND THEN FROM THAT HE GETS A
18 DOLLAR.

19 MS. PEDEN: RIGHT, AND THAT'S ABSOLUTELY RIGHT. AND
20 SO HE DOESN'T EVER AT ANY POINT USE THE ENTIRE SALES PRICE OF
21 AN IPAD TO GET TO HIS PROFIT PREMIUM. IF HE DID, IF HE USED
22 THE ENTIRE PRICE OF THE IPAD, HE MAY RUN AFOUL OF THE ENTIRE
23 MARKET VALUE RULE. BUT HE DOESN'T.

24 THE COURT: SO I DON'T NEED TO REDACT THE \$86?

25 MR. MUELLER: NO. AGAIN, THIS IS NOT AN APPLE

1 FIGURE.

2 THE COURT: OKAY.

3 MR. MUELLER: JUST TO BE VERY, VERY CLEAR, THIS IS
4 THE GPNE DAMAGES EXPERT'S DETERMINATION AS TO WHAT HE SAYS THIS
5 IS WORTH.

6 THE COURT: OKAY.

7 MR. MUELLER: IT HAS NOTHING TO DO WITH ANY FIGURES
8 THAT APPLE HAS ENDORSED OR TAKEN ANY POSITIONS ON.

9 THE COURT: OKAY.

10 MR. MUELLER: SO THIS \$86 FIGURE, TO BE VERY CLEAR,
11 IS THE GPNE EXPERT'S FIGURE THAT THEY'VE COME UP WITH FOR THE
12 VALUE OF CELLULAR.

13 THEY THEN GO TO A DOLLAR A UNIT FROM \$86, AND THERE'S NO
14 EXPLANATION. AND AT HIS DEPOSITION, AGAIN, I ASKED THIS
15 EXPERT, "SHOW ME THE MATH. HOW DO YOU GET FROM \$86 TO \$1?"

16 AND THE ANSWER WAS, AND THIS IS IN OUR BRIEF, "THERE IS NO
17 MATH."

18 THERE'S NO EXPLANATION, THERE'S NO TRANSPARENCY, AND
19 THERE'S NO RIGOR. HE'S TAKING A CLASSIC BLACK BOX APPROACH
20 WHERE HE'S IDENTIFIED WHAT HE SAYS -- AGAIN, THIS IS HIS
21 OPINION -- IS THE VALUE OF CELLULAR FUNCTIONALITY AND THEN
22 HE'S, FROM THAT, ASKING FOR A ROYALTY OF A DOLLAR A UNIT AND
23 IT'S REALLY PULLED OUT OF THIN AIR.

24 AND THIS IS WHAT THE FEDERAL CIRCUIT HAS SAID IS
25 IMPERMISSIBLE, AND ONE EXAMPLE OF A CASE IN WHICH THEY'VE SAID

1 THAT IS THE LASER DYNAMICS CASE, AND IN THAT CASE THE FEDERAL
2 CIRCUIT SAID IT IS IMPERMISSIBLE FOR AN EXPERT TO, IN THE
3 COURT'S WORDS, PLUCK FROM THIN AIR A NUMBER BASED ON
4 QUALITATIVE FACTORS AND VAGUE NOTIONS ON VALUE.

5 AND THAT'S EXACTLY WHAT WE HAVE HERE. WE HAVE THIS
6 ANALYSIS THAT RESULTS IN THE \$86. WE THINK IT'S WRONG, BUT
7 LET'S SET THAT ASIDE.

8 FROM THERE TO A DOLLAR, THERE'S NO EXPLANATION. IT'S
9 UTTERLY OPAQUE, AND YOU CAN'T DO THAT. YOU NEED TO SHOW YOUR
10 MATH. YOU NEED TO BE MORE TRANSPARENT.

11 SO REALLY AT THE END OF THE DAY, YOUR HONOR, THERE'S TWO
12 INDEPENDENT PROBLEMS WITH THE DAMAGES EXPERT'S OPINIONS.
13 FIRST, HE DIDN'T EVEN TRY TO IDENTIFY THE RELEVANT COMPONENT
14 WITHIN THE PRODUCTS THAT MOST CLOSELY TIES TO THE INVENTION,
15 AND HE DIDN'T DO THAT BECAUSE HE HAD AN INCORRECT VIEW OF THE
16 LAW.

17 SECOND, EVEN AS TO THIS ANALYTICAL APPROACH, AS THEY CALL
18 IT, THERE'S NO EXPLANATION AS TO HOW THAT APPROACH WAS
19 CONDUCTED. IT'S SIMPLY BECAUSE HE SAYS IT.

20 AND THAT IS NOT ENOUGH. YOU NEED TO SHOW YOUR MATH. YOU
21 NEED TO BE MORE RIGOROUS METHODOLOGICALLY.

22 THE COURT: ALL RIGHT. THIS IS WHAT I WOULD LIKE TO
23 DO. I WOULD LIKE TO GIVE YOU MY TENTATIVE RULINGS AND THOUGHTS
24 ON THE VARIOUS MOTIONS THAT HAVE BEEN FILED, AND THEN I THINK
25 WE NEED TO DO A LITTLE BIT OF CASE MANAGEMENT BECAUSE WE ARE

1 OTHERWISE MARCHING TOWARDS TRIAL AND I THINK SOME OF THESE
2 RULINGS ARE GOING TO REQUIRE US TO SCHEDULE SOME NEW DATES.

3 OKAY? SO WHY DON'T WE JUST -- I'LL JUST START FROM THE
4 SUMMARY JUDGMENT MOTION.

5 I THINK THE QUESTION OF WHETHER THE ACCUSED DEVICES ARE
6 PAGERS, I DO THINK THAT THERE IS A MATERIAL FACTUAL DISPUTE
7 HERE, SO I'M GOING TO MOST LIKELY DENY SUMMARY JUDGMENT ON THAT
8 ISSUE.

9 SIMILARLY, WHETHER THE ACCUSED DEVICES HAVE THE CAPABILITY
10 TO COMMUNICATE ON A PAGING SYSTEM THAT IS INDEPENDENT OF A
11 TELEPHONE SYSTEM, I WAS PLANNING TO DENY IT ON GPRS.

12 I THINK ON LTE, SINCE I DIDN'T SEE EVIDENCE WITH REGARD TO
13 LTE, I'M GOING TO TAKE THAT ONE UNDER SUBMISSION.

14 BUT I THINK THERE ARE SOME FACTUAL ISSUES HERE THAT ARE
15 MATERIAL AND THAT THOSE QUESTIONS SHOULD GO TO A JURY, AT LEAST
16 WITH REGARD TO GPRS, AND I'LL -- WITH LTE, I'LL HAVE TO TAKE A
17 LOOK AT THAT FURTHER.

18 INDIRECT INFRINGEMENT, GPNE HAS WITHDRAWN THAT, SO THAT'S
19 GOING TO BE A GRANT.

20 WITH REGARD TO THE MOTION FOR PARTIAL SUMMARY JUDGMENT OF
21 INVALIDITY, AS YOU COULD PROBABLY TELL FROM THE QUESTIONS, I'M
22 GOING TO GRANT THAT AND IT'S NOT GOING TO BE LIMITED JUST TO
23 CLAIMS 1, 30 AND 39 THAT WERE MORE EXPLICITLY REQUESTED IN THE
24 MOTION. I THINK IT ALSO APPLIES TO OTHER CLAIMS THAT HAVE BEEN
25 ASSERTED, LIKE CLAIM 13, CLAIM 18 AND CLAIM 31. SO IT WOULD BE

1 A GRANT AS TO 13, 18, 30, 31 AND 39.

2 I THINK WITH REGARD TO 42, SINCE IT EXPLICITLY DOES CALL
3 OUT DIFFERING FREQUENCIES, APPLE DIDN'T ASK FOR AN INVALIDITY
4 JUDGMENT ON THAT AND I WOULD HAVE DENIED ONE ANYWAY, SO THAT
5 PATENT IS STILL GOING TO GO FORWARD, AT LEAST WITH REGARD TO
6 CLAIM 42.

7 SO THAT -- IT'LL BE A GRANT ON INVALIDITY, A GRANT ON
8 INDIRECT INFRINGEMENT, A DENIAL ON PAGER AND OPERATING
9 INDEPENDENTLY OF A TELEPHONE NETWORK. OKAY?

10 NOW, WITH REGARD TO THE VOLUMINOUS DAUBERTS AND MOTION TO
11 STRIKE, WITH REGARD TO MR. DANSKI -- WITH REGARD TO MR. DANSKI,
12 I'M GOING TO GRANT THAT MOTION, AND LET ME TELL YOU WHAT SOME
13 OF MY THOUGHTS ARE WITH REGARD TO THAT.

14 I DO THINK IT'S A BLACK BOX. THERE REALLY IS NO
15 EXPLANATION FOR HOW HE GOES FROM \$86 TO \$1, AND THE FACT THAT
16 HE TRIES TO SAY, YOU KNOW, THIS IS MORE LIKE, YOU KNOW, A
17 CROSS-LICENSE WITH NOKIA OR ERICSSON FOR ENTIRE PATENT
18 PORTFOLIOS ON CELLULAR TECHNOLOGY, I'M SORRY, THAT'S JUST NOT
19 REALLY CREDIBLE.

20 SO -- AND THE FACT THAT HE DISCOUNTS THE OTHER LICENSES --
21 NOW, I'M NOT SAYING HE NEEDS TO RELY ON THOSE OTHER LICENSES,
22 BUT I WAS NOT PERSUADED THAT HE DID A THOROUGH DISTINCTION OF
23 WHY THOSE OTHER LICENSES WERE NOT PROBATIVE.

24 BUT, YOU KNOW, MAINLY JUST QUOTING A BUNCH OF THINGS
25 SAYING 3G AND 4G LTE CAPABILITY IS REALLY IMPORTANT, THAT'S

1 JUST NOT ENOUGH TO COME UP WITH A DOLLAR FIGURE.

2 SO THAT'S GOING TO BE A GRANT.

3 SO WE'RE GOING TO HAVE TO FIGURE OUT A SCHEDULE, BECAUSE I
4 WILL GIVE YOU TIME TO PREPARE A NEW DAMAGES REPORT; APPLE WILL
5 WANT TO DO A REBUTTAL REPORT; YOU'LL HAVE TO DO, AGAIN,
6 DEPOSITIONS OF EXPERTS.

7 NOW, WITH REGARD TO MR. MEYER, I'M GOING TO DENY THE
8 MOTION WITH REGARD TO LICENSES AND SETTLEMENT AGREEMENTS.

9 THE COMPONENT ROYALTY STACK IS A LITTLE TRICKY, BUT I'M
10 INCLINED TO DENY THAT AS WELL, AND ALSO TO DENY AS TO SMALLEST
11 SALEABLE UNIT.

12 SO THE MOTION WITH REGARD TO MR. MEYER'S TESTIMONY IS
13 GOING TO BE A DENIAL.

14 MS. PEDEN: YOUR HONOR, CAN I BE HEARD FOR JUST ONE
15 MINUTE ON MR. MEYER?

16 THE COURT: THAT'S FINE.

17 MS. PEDEN: I THINK FUNDAMENTALLY, AT A VERY HIGH
18 LEVEL, THE PROBLEM WITH MR. MEYER'S PROPOSED EXPERT TESTIMONY
19 IS THAT IT ALL STEMS FROM THIS PREMISE THAT THERE IS A RAND
20 OBLIGATION IN THIS CASE.

21 THE COURT: I DON'T THINK SO. HE DOESN'T ACTUALLY
22 SAY THAT. WHAT HE SAYS IS THAT EVEN THOUGH THERE ISN'T A RAND
23 OBLIGATION HERE, APPLE, IN ITS LICENSING PRACTICES, WOULD
24 CONSIDER AND THINK OF THAT AS A FACTOR AND USE THAT IN
25 DETERMINING WHETHER WHAT THEY WOULD BE WILLING TO PAY WOULD BE

1 CONSISTENT WITH THAT.

2 SO I DISAGREE. I DON'T THINK HE SAYS THIS IS A RAND
3 OBLIGATION, THEY HAVE TO DO IT THIS WAY. I THINK HE'S JUST
4 SAYING AS PART OF A HYPOTHETICAL NEGOTIATION, THEY WOULD BE
5 THINKING THEY SHOULD BE ENTITLED TO GET A RAND LICENSE FOR
6 THAT. SO I ACTUALLY DISAGREE ON THAT POINT.

7 BUT I INTERRUPTED YOU, SO IF YOU WANT TO FINISH ON THAT,
8 GO AHEAD.

9 MS. PEDEN: I BELIEVE THAT READING THE EXPERT REPORT,
10 THAT BECAUSE HE IMPOSES HIS VIEW OF -- THAT THERE IS A RAND
11 OBLIGATION --

12 THE COURT: OKAY.

13 MS. PEDEN: -- THAT THEN HE MODIFIES THE
14 GEORGIA-PACIFIC FACTORS IN A WAY THAT CONTINUALLY, THROUGHOUT
15 THE REPORT, NOT ONLY SHAPE AND CHANGE THOSE FACTORS TO FIT
16 WITHIN THE RAND CASE LAW, BUT HE ALSO MAKES NO ROOM FOR GPNE AT
17 THE HYPOTHETICAL NEGOTIATION BECAUSE HE ASSUMES THAT THEY'VE
18 GIVEN UP THEIR BARGAINING POWER, THEIR ABILITY TO EXCLUDE, AND
19 THAT THEY MUST TAKE INTO ACCOUNT ROYALTY STACKING, ALL OF WHICH
20 COMES DIRECTLY FROM THE RAND CASE LAW.

21 AND IN ORDER TO HAVE THAT KIND OF A RAND LIMITATION ON
22 DAMAGES -- RAND RESTS IN CONTRACT -- APPLE WOULD HAVE HAD TO
23 PLEAD A CONTRACT CLAIM AND THERE WOULD HAVE HAD TO BE SOME
24 EVIDENCE THAT THERE IS A CONTRACT THAT CHANGES THE
25 GEORGIA-PACIFIC ANALYSIS.

1 HERE THEY'VE SKIPPED THE PLEADING REQUIREMENT. THEY'VE
2 SKIPPED THE REQUIREMENT THAT YOU HAVE TO SHOW THAT THERE WOULD
3 BE THIS OBLIGATION.

4 BUT THEY IMPOSE ON GPNE ALL OF THE DOWN SIDES OF THE QUID
5 PRO QUO THAT WOULD GO ON IN A RAND SCENARIO.

6 MR. MUELLER: THREE POINTS, YOUR HONOR.

7 FIRST, THE DAMAGES EXPERT DIDN'T, AS YOU SAID, RELY ON THE
8 RAND COMMITMENT. THAT'S NOT PART OF THE ANALYSIS AT ALL.

9 SECOND, AS TO ROYALTY BASE AND THE ROYALTY STACK ANALYSIS,
10 IT'S DRIVEN BY BLACK LETTER DAMAGES LAW. UNILOC, LASER
11 DYNAMICS, THOSE ARE NOT STANDARDS OR RAND CASES. THOSE ARE
12 PATENT DAMAGES CASES AND THOSE ARE THE -- THAT'S THE PRINCIPLES
13 THAT MR. MEYER APPLIED IN CALCULATING OR IN DETERMINING THE
14 APPROPRIATE ROYALTY BASE.

15 THERE'S NO NOTION OF FRAND REQUIRING THAT IN HIS REPORT.
16 IT'S PATENT DAMAGES LAW REQUIRING THAT.

17 THIRD, ROYALTY STACKING IS A CONSIDERATION THAT A
18 REASONABLE LICENSEE WOULD TAKE INTO ACCOUNT IN A HYPOTHETICAL
19 NEGOTIATION WITH OR WITHOUT REGARD TO FRAND.

20 ONE WOULD CONSIDER, AS A REASONABLE LICENSEE, HOW MANY
21 OTHER PATENTS OR HOW MANY OTHER CLAIMS COULD BE MADE ON THOSE
22 SAME PRODUCTS. IT'S AN ECONOMICALLY RATIONAL THING TO DO.

23 AND FINALLY, YOUR HONOR, THERE ARE PLACES WHERE THE FRAND
24 COMMITMENT MAKES A REAL DIFFERENCE, INJUNCTIVE RELIEF, FOR
25 EXAMPLE. THIS IS NOT AN INJUNCTION CASE.

1 ON THE QUESTIONS THAT ARE BEFORE THE COURT AND ON THE
2 QUESTIONS THAT WERE ADDRESSED BY MR. MEYER, BASIC PATENT
3 DAMAGES LAW COMPELS EXACTLY THE SAME RESULT, AND THAT'S WHAT HE
4 RELIED ON.

5 MS. PEDEN: YOUR HONOR, HE COMES UP WITH HIS OWN
6 TEST, HE CALLS IT A COMPONENT ROYALTY STACKING APPROACH, WHICH
7 HAS NEVER BEEN USED ANYWHERE. HE WHOLLY MAKES IT UP OUT OF
8 THIN AIR. HE APPLIES IT AS IF HE'S FOLLOWING THE MICROSOFT
9 VERSUS MOTOROLA CASE OR THE INOVAGEO CASE, AND ALTHOUGH HE MAY
10 HEDGE BY SAYING THAT HE CAN'T PROVE THAT THERE'S A CONTRACTUAL
11 RELATIONSHIP HERE BECAUSE, IN FACT, HE CANNOT, HE APPLIES ALL
12 OF THE LIMITATIONS THAT WOULD COME WITH A RAND COMMITMENT IN
13 HIS ANALYSIS.

14 IF ANYTHING, IT'S EVEN MORE FLAWED BECAUSE HE'S APPLYING
15 AN ANALYSIS BASED ON A CONTRACT PRINCIPLE THAT DOESN'T APPLY
16 HERE. IT'S JUST WRONG AS A MATTER OF LAW.

17 MR. MUELLER: AGAIN, YOUR HONOR, I THINK I'VE ALREADY
18 SAID THE REASONS WHY THAT'S INCORRECT.

19 THE COURT: ALL RIGHT. ALL RIGHT. WELL, I'M
20 INCLINED TO DENY THE MOTION WITH REGARD TO MR. MEYER.

21 I'M ALSO INCLINED TO DENY THE MOTION TO EXCLUDE
22 DR. DINAN'S TESTIMONY, AND ALSO TO STRIKE HIS EMULATION TEST
23 RESULTS.

24 I THINK THAT THE FACT THAT GPNE HAS PROVIDED THE SERIAL
25 NUMBERS OF THE EQUIPMENT THAT WAS RENTED, ALONG WITH ALL OF THE

1 CONFIGURATION SETTINGS THAT WERE NOT DEFAULT SETTINGS IS
2 SUFFICIENT THAT APPLE SHOULD BE ABLE TO DO ITS OWN SIMULATION
3 OR EMULATION.

4 SO THE MOTION TO STRIKE IS GOING TO BE DENIED, AND THE
5 MOTION TO EXCLUDE HIS TESTIMONY.

6 NOW, I DO WANT TO TAKE A LOOK AT THE LTE ISSUE A LITTLE
7 BIT MORE CLOSELY.

8 BUT THAT'S THE TENTATIVE AS TO DR. DINAN.

9 I'M ALSO GOING TO DENY APPLE'S MOTION TO STRIKE THE
10 INFRINGEMENT CONTENTIONS.

11 AND SO THAT'S THE SORT OF TENTATIVE RULINGS ON EVERYTHING.

12 I WOULD LIKE TO TALK ABOUT WHERE WE GO FROM HERE,
13 UNDERSTANDING THAT THAT'S LIKELY TO BE ALL THE RULINGS.

14 WHERE DO WE GO FROM HERE? I MEAN, WE DEFINITELY NEED TO
15 SET A SCHEDULE FOR A NEW PLAINTIFF'S DAMAGES EXPERT REPORT, A
16 REBUTTAL REPORT, AND DEPOSITIONS.

17 I ALSO WANT TO TALK ABOUT MOTIONS IN LIMINE. I AM
18 COMPLETELY PREPARED TO TRY THIS CASE. I LIKE TRIALS MUCH MORE
19 THAN LAW AND MOTION, SO WE CAN CERTAINLY DO THIS.

20 ACTUALLY, I REALLY DISLIKE LAW AND MOTION.

21 BUT THE QUESTION IS, IF YOU ARE GOING TO SETTLE, I WANT
22 YOU TO DO IT SOONER BEFORE I INVEST MORE TIME AND RESOURCES IN
23 THIS CASE, AND SO I WANTED TO TALK ABOUT IF YOU ARE AMENABLE TO
24 HAVING ANOTHER SESSION. I KNOW YOU'VE ALREADY HAD AN ADR
25 SESSION PREVIOUSLY, AND IF YOU DON'T WANT TO HAVE ONE, I WILL

1 NOT FORCE IT BECAUSE I DON'T WANT TO WASTE YOUR TIME AND YOUR
2 CLIENT'S TIME AND MONEY.

3 BLESS YOU.

4 BUT IF YOU ARE WILLING TO DO ONE, I WOULD LIKE TO SCHEDULE
5 THAT AS WELL BEFORE, YOU KNOW, WE ALL SPEND MUCH MORE TIME.

6 SO THOSE ARE THE THINGS THAT I WOULD LIKE TO TALK ABOUT.

7 I HAVE SPECIFIC PROPOSALS. I CAN LAY THOSE OUT OR I CAN
8 HEAR FROM YOU ALL.

9 MR. SUSSE: THANK YOU, YOUR HONOR, AND THANK YOU FOR
10 HANDLING ALL OF THESE LARGE MOTIONS TODAY.

11 YOUR HONOR, GPNE REMAINS WILLING TO MEDIATE AND/OR DO
12 OTHER TYPES OF ADR, BUT WE DO HAVE A DISAGREEMENT ABOUT WHETHER
13 THAT CAN BE DONE BECAUSE OF A PENDING CASE THAT GPNE IS
14 BRINGING IN CHINA AGAINST APPLE. APPLE HAS SAID THAT THEY WANT
15 TO SETTLE THE WORLD OR NOTHING, AND WE DON'T HAVE THE CONTROL
16 OVER THE CHINESE LAWYERS AND THEIR CASE UNFORTUNATELY.

17 THE COURT: ALL RIGHT. WELL, THEN, LET'S GO TO
18 TRIAL.

19 LET ME ASK YOU A QUESTION. SO I'M GOING TO SLICE OFF --
20 HOW MANY? -- ONE, TWO, THREE, FOUR, FIVE OF THE SIX CLAIMS THAT
21 YOU'RE ASSERTING FOR THE '267. I HAD ONLY ALLOWED YOU TO
22 IDENTIFY TEN CLAIMS, SO YOU'RE DOWN TO FIVE. I'M NOT ALLOWING
23 YOU TO THEN SWAP IN NEW ONES, SO YOU'D BE LEFT WITH CLAIMS 19
24 AND 22 OF THE '954, CLAIM 42 OF THE '267, AND CLAIMS 37 AND 44
25 OF THE '492.

1 I HAD ORIGINALLY SET THIS TRIAL FOR SEVEN DAYS. TELL ME,
2 IF YOU'RE ONLY DOING THOSE FIVE CLAIMS OF THESE THREE PATENTS,
3 HOW MUCH TIME DO YOU NEED? 13, 18, 30, 31 AND 39 ARE NOT GOING
4 TO TRIAL.

5 MR. SUSSER: I NEVER THOUGHT THAT THE NUMBER OF
6 CLAIMS WAS REALLY GOING TO BE A BIG FACTOR BECAUSE A LOT OF
7 THESE CLAIMS OVERLAP. YOU'RE NOW FAMILIAR WITH THEM. A LOT OF
8 THEM SAY THE SAME THING IN VERY SLIGHTLY DIFFERENT WAYS.

9 THE COURT: YEAH.

10 MR. SUSSER: SO WE THOUGHT THAT THE SEVEN DAYS, WITH
11 THE WAY THE COURT HANDLES THE TRIAL DAYS, AND THE FACT THAT WE
12 HAVE TECHNICAL EXPERTS AND DAMAGES EXPERTS AND A HANDFUL OF
13 FACT WITNESSES, WE THOUGHT SEVEN DAYS WAS RIGHT. WE COULD GO
14 LOWER AND JUST TRY TO FORCE IT IN IF YOU WANT.

15 MS. LUTTON: I AGREE, YOUR HONOR. I THINK SEVEN DAYS
16 IS STILL AN APPROPRIATE AMOUNT OF TIME.

17 THE COURT: OKAY.

18 MS. LUTTON: I ALSO -- YOU HAD MENTIONED THAT YOU
19 WERE INCLINED TO DENY THE DINAN DAUBERT AND MOTION TO STRIKE.

20 THE COURT: YES.

21 MS. LUTTON: AND YOU HAD MENTIONED A NUMBER OF FACTS
22 THAT SUPPORTED YOUR DENIAL. I WANTED TO ADDRESS ONE OF THEM.
23 I DON'T KNOW IF NOW IS A GOOD TIME.

24 THE COURT: NOW IS FINE.

25 MS. PEDEN: OKAY. YOU HAD MENTIONED THAT APPLE WAS

1 AWARE OF ALL THE PARAMETERS THAT WERE SET IN THE TEST
2 EQUIPMENT, AND THAT'S NOT ACCURATE. DR. DINAN ACTUALLY HAS
3 SAID IN HIS TESTIMONY THAT IF THE PARAMETERS WERE NOT IN HIS
4 REPORT, THEN HE COULDN'T TELL APPLE WHAT THE PARAMETERS WERE.

5 THE COURT: I THOUGHT HE SAID THEY WERE DEFAULTS IF
6 HE DIDN'T PROVIDE CONFIGURATION SETTINGS.

7 MS. LUTTON: AT ONE POINT HE DID, BUT HE SAID HE TOOK
8 SCREEN SHOTS SO HE WOULD REMEMBER THEM. HE DOESN'T HAVE THE
9 SCREEN SHOTS. HE CANNOT PRODUCE THOSE SCREEN SHOTS TO APPLE.

10 AND IN HIS TESTIMONY AT 50, LINES 4 TO 11, HE SAID, AS TO
11 HIS SETTINGS, "IF IT'S NOT IN MY REPORT, I CAN'T TELL YOU. IF
12 IT'S NOT IN MY REPORT, I DON'T REMEMBER THAT. I WORK WITH SO
13 MANY DEVICES AND SO MANY PROJECTS, I CAN'T REALLY RECOLLECT MY
14 PARAMETERS."

15 MR. BUMGARDNER: WHAT DR. DINAN WAS REFERRING TO,
16 YOUR HONOR -- AND THIS IS BARRY BUMGARDNER FOR GPNE -- WHAT
17 DR. DINAN WAS REFERRING TO, HE COULDN'T REMEMBER A NUMBER, THAT
18 THERE'S THESE DEFAULT PARAMETERS TO RECALL THE SPECIFIC VALUE
19 OF A SPECIFIC NUMBER, THAT JUST AT THE DEPOSITION WITH THE
20 NUMBER OF PARAMETERS TO SAY, "WELL, THIS KNOB WAS SET TO THIS,
21 THIS, OR THIS VALUE," HE DIDN'T RECALL THAT.

22 BUT WHAT HE DID TESTIFY TO AFFIRMATIVELY, AFFIRMATIVELY
23 WAS JUST AS YOU SAID, "IF IT'S NOT IN MY REPORT, I USED THE
24 DEFAULT PARAMETERS."

25 SO AS TO WHATEVER SETTINGS THE DEFAULTS WERE, WHEN YOU

1 TURN THIS DEVICE ON, IT COMES UP AND THE PARAMETERS HAVE A
2 STATE, THAT'S WHAT DR. DINAN TESTIFIED TO AND THAT'S WHAT HE
3 USED.

4 MS. LUTTON: YOUR HONOR, THE REFERENCE TO DEFAULT
5 PARAMETERS IS NOWHERE IN HIS REPORT, AND THIS IS NOT A TEST
6 THAT APPLE CAN RECREATE AND THAT'S A HALLMARK OF SCIENTIFIC
7 EVIDENCE, THAT THE TEST IS ACTUALLY SOMETHING THAT CAN BE
8 RECREATED AND TESTED.

9 THE COURT: IS IT IN HIS REPORT?

10 MR. BUMGARDNER: IS WHAT IN HIS REPORT, YOUR HONOR?

11 THE COURT: I THINK I HAVE HIS REPORT. WHY DON'T YOU
12 GIVE ME THE PAGE AND LINE NUMBERS AND PARAGRAPH NUMBERS SO I
13 CAN VERIFY THIS?

14 MR. BUMGARDNER: OF?

15 THE COURT: WHAT DID HE SAY? I MEAN, I AGREE WITH
16 APPLE THAT IT HAS TO BE A REPEATABLE EXPERIMENT, THAT THEY HAVE
17 TO BE ABLE TO DO THE SAME EMULATION.

18 MS. LUTTON: AND YOUR HONOR, THERE'S ALSO A TIMING
19 ISSUE BECAUSE WE WERE, YOU KNOW, FIRST TOLD ABOUT THE TEST SIX
20 OR SEVEN MONTHS AFTER THEY WERE PERFORMED RIGHT WHEN WE
21 RECEIVED THE EXPERT REPORT, SO THERE'S ALSO A TIMING ISSUE.

22 BUT MORE IMPORTANTLY, THERE'S A RECREATION ISSUE THAT
23 WE'RE FACED WITH.

24 MR. BUMGARDNER: WELL, YOUR HONOR, THE ONLY EVIDENCE
25 THAT APPLE HAS ABOUT THIS RECREATION IS FROM DR. WILSON, THEIR

1 EXPERT. THAT'S THE EVIDENCE ABOUT THIS RECREATION.

2 DR. WILSON, FIRST, HAS NEVER USED THIS DEVICE, THE AGILENT TEST
3 MACHINE THAT DR. DINAN USED. SHE TESTIFIED IN HER DEPOSITION
4 SHE'D NEVER USED IT.

5 AND WHEN I ASKED HER, "WHAT ABOUT WHAT DR. DINAN HAS
6 DISCLOSED, WHY COULDN'T YOU REPEAT THIS TEST?" I'LL NOTE
7 MS. LUTTON OBJECTED AS, "OBJECTION, CALLS FOR SPECULATION."

8 AND THAT'S WHAT WE HAVE, YOUR HONOR, THAT APPLE'S EVIDENCE
9 THAT THIS TEST ISN'T RECREATABLE IS FROM A PERSON THAT'S NEVER
10 USED THIS DEVICE AND NEVER TRIED TO USE IT.

11 WHAT I'M PREPARED TO HAND UP, YOUR HONOR, IS DR. DINAN
12 ACHIEVED THE SAME SIGNALLING THAT CETECOM HAD. SO APPLE --
13 THIS THIRD PARTY TEST LAB THAT APPLE USES TO CERTIFY THESE
14 DEVICES, DR. DINAN, THE SIGNALLING HE REPRODUCED WAS THE SAME
15 SIGNALLING THAT CETECOM GETS.

16 SO AS TO RELIABILITY, I THINK YOU HAVE IT RIGHT THERE,
17 THAT HE, DR. DINAN, ACHIEVED THE SAME SIGNALS THAT CETECOM
18 ACHIEVED, AND IF YOUR HONOR WOULD LIKE TO LOOK AT THEM, I'M
19 HAPPY TO HAND THESE UP, A SIDE-BY-SIDE COMPARISON SHOWING THAT
20 HE GOT THE SAME RESULTS THAT CETECOM GOT.

21 MS. LUTTON: YOUR HONOR, DR. WILSON IS A STANFORD
22 PH.D. WHO'S A FORMER AGILENT EMPLOYEE. IF SHE HASN'T USED THE
23 EQUIPMENT BEFORE, SHE CERTAINLY COULD FIGURE IT OUT IF SHE HAD
24 ALL THE PARAMETERS. IN HER TESTIMONY SHE SAID THAT SHE DIDN'T
25 HAVE ALL THE PARAMETERS. IT WASN'T A TEST THAT SHE COULD

1 RECREATE.

2 SHE DID ADDITIONALLY SAY THAT IT WOULDN'T BE HELPFUL TO
3 RECREATE IT BECAUSE IT IS SIMULATING A CELL PHONE ENVIRONMENT
4 AND NOT A PAGING SYSTEM, SO SHE HAD ADDITIONAL OPINIONS ON THAT
5 AS TO THE RELEVANCE OF THE TEST, WHICH IS ANOTHER OF THE
6 DAUBERT PRONGS.

7 BUT IN TERMS OF RELIABILITY, HER TESTIMONY WAS THAT SHE
8 DIDN'T HAVE ALL THE DIFFERENT PARAMETERS AND SETTINGS, SHE
9 DIDN'T KNOW HOW THE TEST SETUP WAS CONFIGURED, SO IT WOULD BE
10 IMPOSSIBLE TO RECREATE THE TEST.

11 MR. BUMGARDNER: AGAIN, YOUR HONOR, DR. DINAN USED
12 THE SAME BOX THAT THE CETECOM THIRD PARTY USES. SO HE USED THE
13 SAME EQUIPMENT, DR. DINAN DID, THAT THIS THIRD PARTY
14 CERTIFICATION LAB USES, SAME MODEL NUMBER, SAME BOX. HE
15 ACHIEVED THE SAME RESULT.

16 AND I WOULD NOTE THAT APPLE HAS THESE, HAS THIS EQUIPMENT
17 IN-HOUSE. THERE'S NO TESTIMONY IN THE RECORD FROM ANY OF THE
18 DOZENS OF APPLE ENGINEERS THAT USE THIS EQUIPMENT THAT THEY
19 COULDN'T DO IT.

20 THE ONLY EVIDENCE APPLE HAS IS THAT A PERSON WHO'S NEVER
21 USED THIS MACHINE THEORETICALLY COULDN'T DO IT EVEN THOUGH SHE
22 DID NOT EVEN TRY TO.

23 MS. LUTTON: YOUR HONOR, THE ISSUE IS NOT THE
24 EQUIPMENT ITSELF. IT'S A MATTER OF FIT. AND THIS IS -- AND
25 DAUBERT SPEAKS TO THIS ISSUE DIRECTLY.

1 A TEST FOR ONE PURPOSE IS NOT NECESSARILY RELEVANT FOR
2 ANOTHER PURPOSE, AND HERE IT'S A FIT ISSUE. THE CETECOM
3 TESTING IS TESTING THAT'S DONE TO SHOW COMPATIBILITY WITH PHONE
4 NETWORKS. THAT'S THE ENTIRE PURPOSE.

5 AND THE TESTS THAT WERE ACTUALLY PERFORMED BY THE EXPERT
6 FROM GPNE, ALTHOUGH THEY USED THE SAME EQUIPMENT, WE'RE NOT
7 DISPUTING THAT'S PROPER EQUIPMENT IF YOU WANT TO TEST
8 COMPATIBILITY WITH CELL PHONE NETWORKS, THERE'S NO SHOWING
9 WHATSOEVER, AND GPNE HAS NOT PROVEN, THAT THAT'S APPROPRIATE
10 EQUIPMENT TO USE TO TEST COMPATIBILITY WITH PAGER NETWORKS.

11 MR. BUMGARDNER: WELL, NOW WE'RE KIND OF MOVING ON,
12 YOUR HONOR. WHAT DR. DINAN -- THE PURPOSE OF THIS TEST --

13 THE COURT: HOW LONG WOULD IT TAKE HIM TO RECREATE
14 THE SYSTEM?

15 MR. BUMGARDNER: I DON'T THINK IT WOULD TAKE VERY
16 LONG, YOUR HONOR. HE DOESN'T HAVE THE EQUIPMENT.

17 THE COURT: RIGHT. YOU'D HAVE TO RENT IT AGAIN FOR,
18 WHAT, \$20,000, \$22,000?

19 MR. BUMGARDNER: IT WAS SOMETHING LIKE THAT.

20 AND I WOULD NOTE APPLE HAS THIS EQUIPMENT.

21 THE COURT: WOULD YOU JUST HAVE HIM SET IT UP ON YOUR
22 EQUIPMENT? THAT WAY YOU CAN SEE EXACTLY WHAT HE DID AND
23 COMPARE THE RESULTS.

24 MR. BUMGARDNER: IT'S -- I DON'T THINK THAT'S
25 NECESSARY, YOUR HONOR. WE PROVIDED 15,000 PAGES OF TEST

1 RESULTS TO APPLE. THEY'VE CRITICIZED NONE OF THE ACTUAL
2 RESULTS THEMSELVES. THERE'S NO CRITICISM OF THE RESULTS.

3 AND, YOUR HONOR, MAY I APPROACH JUST BRIEFLY? AND I'LL
4 KEEP THIS SHORT.

5 THE COURT: ALL RIGHT. WHAT IS IT THAT YOU HAVE?
6 SHOW MS. LUTTON FIRST, PLEASE.

7 MR. BUMGARDNER: IT'S ON PAGE 6 I'M REFERRING TO.

8 YOUR HONOR, I WOULD JUST -- I CAN SHOW YOU. THESE ARE THE
9 RESULTS CETECOM RUNS ON THE RIGHT. WE GET A CHANNEL REQUEST,
10 IMMEDIATE ASSIGNMENT, A PACKET RESOURCE REQUEST, AND A PACKET
11 UPLINK ASSIGNMENT MESSAGE.

12 CETECOM, APPLE'S THIRD PARTY TEST HOUSE, RUNS TESTS AND
13 SEES THAT THE PHONE CAN SEND AND RECEIVE THESE SIGNALS.

14 DR. DINAN'S RESULTS ARE ON THE RIGHT. HERE'S A RANDOM
15 ACCESS WHICH MATCHES UP WITH THE CHANNEL REQUEST. THERE'S
16 IMMEDIATE ASSIGNMENT, JUST LIKE CETECOM DID. THERE'S A PACKET
17 RESOURCE REQUEST THAT CETECOM GETS, AND A PACKET UPLINK
18 ASSIGNMENT MESSAGE.

19 HE ACHIEVED -- CETECOM CAN SOMEHOW RUN THESE TESTS AND GET
20 THESE RESULTS. DR. DINAN GOT THE SAME RESULTS, BUT CAPTURED
21 MORE DETAIL AND, YOU KNOW, THE ABILITY FOR THE PHONES TO SEND
22 AND RECEIVE THESE MESSAGES ON DIFFERENT FREQUENCIES.

23 THE COURT: UM-HUM.

24 MR. BUMGARDNER: BUT HE GOT THE SAME RESULTS CETECOM
25 GOT, SO THIS ISN'T SOME VODOO CRAZY STUFF GOING ON. HE

1 JUST -- I WON'T SAY HE REPLICATED WHAT CETECOM DID, BUT HE GOT
2 THE SAME RESULTS AS TO THE SENDING AND RECEIVING OF THESE
3 MESSAGES WHICH HAVE BEEN AT THE HEART OF GPNE'S INFRINGEMENT
4 CASE FOR TWO YEARS NOW.

5 MS. LUTTON: YOUR HONOR, EVEN THOUGH HE GOT THE SAME
6 RESULTS AND THE SAME EQUIPMENT, WE DON'T KNOW WHAT HE DID TO
7 GET THESE RESULTS.

8 AND AS TO WHETHER APPLE HAS CONCERNS OR ISSUES WITH THE
9 RESULTS, IF YOU LOOK AT THE ACTUAL RESULTS HE RELIES ON, HE
10 RELIES ON EMTEL MESSAGES, WHICH IT'S NOT EVEN CLEAR WHAT THESE
11 MESSAGES ARE.

12 I MEAN, OVER AND OVER AGAIN IN THE RESPONSIVE BRIEF BY
13 GPNE, GPNE HAS CHARACTERIZED THESE EMTEL MESSAGES AS,
14 ALTERNATIVELY, ARTIFACTS OF THE AGILENT TEST SOFTWARE, A FORMAT
15 OF SAVING FILES, A TOOL THAT HELPS ANALYZE DATA, AND
16 INFORMATION IN THE TEST DATA.

17 SO IF YOU ACTUALLY LOOK AT WHAT DR. DINAN RELIED UPON --
18 AND WE HAVE SLIDES WE CAN HAND OUT IF IT WOULD BE HELPFUL --
19 BUT WHAT HE RELIES UPON IS IN SOME INSTANCES EMTEL MESSAGES
20 COMBINED WITH OTHER MESSAGES, AND IN SOME INSTANCES JUST THESE
21 EMTEL MESSAGES AND NOT ANY TYPE OF MESSAGE THAT WOULD BE RELIED
22 UPON DURING THE CETECOM TESTING.

23 SO APPLE DOES INDEED HAVE CONCERNS AND ISSUES NOT ONLY
24 WITH WHATEVER METHODOLOGY WAS USED ON THE MACHINE, BUT ALSO THE
25 RESULTS THAT THE EXPERT RELIES ON FROM THE MACHINE.

1 MR. BUMGARDNER: BRIEFLY --

2 THE COURT: BUT, YOU KNOW, APPLE'S EXPERT,
3 DR. WILSON, HASN'T TRIED TO REPEAT THIS TEST, DOESN'T THINK
4 IT'S A RELEVANT TEST, HAS NOT BOTHERED TO GO GET THE SAME
5 EQUIPMENT EVEN THOUGH THEY HAVE THE SERIAL NUMBERS.

6 MS. LUTTON: YOUR HONOR, SHE DOESN'T HAVE ALL THE
7 PARAMETERS. IT'S IMPOSSIBLE TO RECREATE THE TEST. IT WOULD
8 HAVE BEEN FRUITLESS FOR HER TO GET THE SAME EQUIPMENT AND NOT
9 BE ABLE TO SET IT UP IN ORDER FOR HER TO PERFORM THE TEST.

10 MR. BUMGARDNER: AND AGAIN, YOUR HONOR, THAT'S
11 DISPUTED.

12 THE COURT: WELL, I'M NOT SATISFIED WITH DR. DINAN'S
13 ANSWERS OF, "OH, YOU CAN CHANGE THE PARAMETERS, IT'LL ALL BE
14 THE SAME THING ANYWAY. WHATEVER I CAN'T REMEMBER, I'M SURE IT
15 WAS JUST DEFAULT SETTINGS." THAT'S NOT SATISFACTORY.

16 ON THE OTHER HAND, APPLE HAS NOT GONE AND TRIED TO
17 ACTUALLY REPLICATE THE TEST ITSELF. IT IS POSSIBLE THAT WITH
18 THE DEFAULT SETTINGS AND THE FEW CONFIGURATION SETTINGS THAT
19 DR. DINAN DID PROVIDE THAT YOU COULD REPLICATE THE SAME THING.

20 ON THIS FACTUAL ISSUE OF WHAT PARAMETERS WOULD BE NEEDED
21 BEYOND THE DEFAULT SETTINGS --

22 MR. BUMGARDNER: BEYOND THE DEFAULT SETTINGS, YOUR
23 HONOR, THOSE WE -- THOSE ARE IN HIS REPORT, WHAT HE CHANGED
24 FROM THE DEFAULT. THAT'S WHAT HE TESTIFIED TO.

25 MS. LUTTON: HE TESTIFIED THAT HE DID SCREEN SHOTS

1 BECAUSE HE WOULDN'T BE ABLE TO REMEMBER WHAT SETTINGS HE
2 ACTUALLY USED, AND HE DOESN'T HAVE THOSE SCREEN SHOTS AND HE'S
3 NOT PROVIDED THOSE SCREEN SHOTS. HE WOULDN'T HAVE HAD TO DO
4 SCREEN SHOTS IF HE WAS SELECTING ALL THE DEFAULT SETTINGS.

5 MR. BUMGARDNER: I DISAGREE WITH THAT.

6 I'LL PROPOSE A SOLUTION, YOUR HONOR.

7 THE COURT: WHAT'S THAT?

8 MR. BUMGARDNER: IF APPLE WOULD LIKE TO TRY AND
9 RECREATE THESE TESTS USING THE DEFAULT PARAMETERS AND THERE'S
10 SOME PROBLEM WITH THAT, PERHAPS DR. DINAN COULD, I MEAN, ASSIST
11 APPLE IN RECREATING HIS TEST.

12 I THINK IT'S INCUMBENT UPON APPLE, IF THEY'RE GOING TO
13 COME IN AND COMPLAIN, TO TRY WHAT DR. DINAN SAID, TRY THE
14 DEFAULT PARAMETERS WITH THE -- WITH THESE SETTINGS HE DESCRIBES
15 IN HIS REPORT.

16 IF THERE'S A PROBLEM, THEN PERHAPS -- YOU KNOW, AGAIN, WE
17 THINK THE TEST RESULTS ARE WHAT THEY ARE AND THEY'RE
18 REPEATABLE.

19 SO IF APPLE'S UNABLE TO RECREATE THIS, THEN PERHAPS WE CAN
20 GET DR. DINAN AND APPLE TO SAY, "HERE'S HOW I ACHIEVED MY
21 RESULTS." BUT I THINK APPLE OUGHT TO AT LEAST TRY FIRST BEFORE
22 GPNE HAS TO, HAS TO GET INVOLVED AND INCUR ADDITIONAL TIME AND
23 EXPENSE.

24 MS. LUTTON: BUT GPNE SHOULD HAVE ALLOWED INSPECTION
25 OF THESE TESTS WHEN THEY PERFORMED THE TESTS, AND PART OF THE

1 REASON THEY DIDN'T IS BECAUSE THEY PERFORMED THESE TESTS BEFORE
2 THE COURT ISSUED ITS CLAIM CONSTRUCTION, SO THESE TESTS WEREN'T
3 IN LIGHT OF TRYING TO TEST THIS NODE ISSUE. THESE WERE TESTS
4 THAT WERE DONE ON A CELL PHONE SYSTEM TO TEST SIGNALS ON A CELL
5 PHONE SYSTEM. IT GETS BACK TO THE RELEVANCE ISSUE.

6 BUT IF THIS WAS A TEST WHICH GPNE PLANNED TO USE, WHICH
7 THEIR TESTIMONY REFLECTS, IF AT THE TIME THEY WERE DOING THE
8 TESTING WITH THIS EXPERT THEY FULLY INTENDED TO USE THESE TESTS
9 AT TRIAL, THEY SHOULD HAVE ALLOWED INSPECTION OF THESE TESTS.

10 THE COURT: ALL RIGHT. WHY DON'T WE DO THIS: I
11 WOULD LIKE APPLE TO TRY TO EMULATE THIS TEST WITH THE
12 PARAMETERS THAT DR. DINAN HAS PROVIDED, AND IF YOU CANNOT
13 REPLICATE THE TEST, THEN I WANT YOU TO RERAISE THIS ISSUE WITH
14 ME.

15 MS. LUTTON: YOUR HONOR, I THINK IT WOULD BE
16 DIFFICULT TO DETERMINE WHETHER WE COULD REPLICATE IT BECAUSE
17 WE'RE NOT GOING TO KNOW IF THE RESULTS WE'RE GETTING ARE -- IF
18 WE'RE PERFORMING THE EXACT SAME STEPS THAT THE EXPERT DID.

19 SO I'M -- AND THIS IS SOMETHING THAT WE'VE DISCUSSED WITH
20 THE EXPERT AND SHE FINDS THIS VERY CHALLENGING. I MEAN, THIS
21 IS WHAT WE'RE UP AGAINST. IT'S THE PARAMETERS, IT'S THE ACTUAL
22 PROCEDURE THAT WAS FOLLOWED WITH THE TEST EQUIPMENT.

23 MR. BUMGARDNER: AND, AGAIN, WE PROVIDED OUR RESULTS.
24 I WOULD THINK APPLE, IF THEY RUN THE TEST, THEY CAN COMPARE THE
25 RESULTS THEY GET TO THE RESULTS THAT WE DISCLOSED TO THEM IN

1 DR. DINAN'S RESULTS AND MAKE AN ASSESSMENT, ARE WE GETTING THE
2 SAME RESULTS OR NOT?

3 THE COURT: OKAY. DID DR. DINAN PROVIDE THE STEPS OF
4 WHAT HE DID? OR HE JUST GAVE RESULTS?

5 MR. BUMGARDNER: HE WALKED THROUGH, IN HIS REPORT,
6 THE SETUP, THE PARAMETERS HE CHANGED AND WHAT HE DID, YES,
7 THERE IS A DESCRIPTION OF THAT IN HIS REPORT.

8 THE COURT: ALL RIGHT. THE MOTION IS GOING TO BE
9 DENIED. IF YOU TRY IT AND YOU HAVE DIFFICULTY, THEN YOU CAN
10 RERAISE IT AT THAT POINT.

11 OKAY. SO LET'S TALK ABOUT -- FOR THE MOTIONS IN LIMINE,
12 THERE'S ONLY GOING TO BE FIVE FOR EACH SIDE AND THE MAX IS 15
13 PAGES; SAME FOR THE REPLY; FOR THE OPPOSITIONS, 15 PAGES, NO
14 REPLIES.

15 AND WITH THE OTHER DEADLINES, YOU CAN FOLLOW THE DEADLINES
16 THAT ARE IN MY STANDING ORDER ON CIVIL JURY TRIALS.

17 BUT AS FAR AS THE MOTIONS IN LIMINE, I'D LIKE A LITTLE
18 MORE TIME WITH THEM. SO THE MOTION IN LIMINE MOTIONS ARE GOING
19 TO BE FILED BY MAY 29TH, AND THE OP -- WELL, I'D LIKE YOU TO
20 GIVE ME TWO WEEKS. CAN YOU DO THAT?

21 MR. BUMGARDNER: CERTAINLY, YOUR HONOR.

22 MS. LUTTON: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT. SO I'D LIKE THE OPPOSITIONS
24 BY MAY 22ND AND THE MOTIONS BY MAY 8TH.

25 NOW, THE ONLY DIFFICULTY IS WE NEED TO FIGURE OUT THE

1 DAMAGES EXPERT REPORT. THAT HAS TO BE DONE IN TIME FOR YOU TO
2 BE ABLE TO DO MOTIONS IN LIMINE BY MAY 8TH.

3 SO TODAY IS THE 3RD. WHAT ABOUT APRIL 17TH -- WELL, I'M
4 SORRY. THAT'S NOT GOING TO BE ENOUGH TIME.

5 WHAT ABOUT APRIL 11TH AND APRIL 18TH?

6 MR. BUMGARDNER: AND THAT'S APRIL 11TH FOR WHAT, YOUR
7 HONOR?

8 THE COURT: FOR YOUR DAMAGES REPORT.

9 MR. BUMGARDNER: OKAY.

10 THE COURT: APRIL 18TH WOULD BE FOR THE REBUTTAL, AND
11 THEN BY APRIL 25TH FINISH THE DEPOSITIONS OF THE TWO EXPERTS,
12 MR. MEYER AND MR. DANSKI. THAT WAY YOU CAN FILE YOUR MOTIONS
13 IN LIMINE BY MAY 8 AND HAVE THE OPPOSITIONS FILED BY MAY 22ND.

14 NOW, I'M NOT INVITING ONE, BUT I ASSUME THERE COULD
15 POTENTIALLY BE ANOTHER DAUBERT WHICH I WOULD DECIDE AT THE
16 PRETRIAL CONFERENCE ON JUNE 12TH AT 1:30.

17 WE'RE GOING TO KEEP THE JURY TRIAL DATE OF JULY 14TH. YOU
18 STILL THINK IT'S SEVEN DAYS, RIGHT?

19 MS. LUTTON: YES, YOUR HONOR.

20 THE COURT: OKAY.

21 MS. LUTTON: YOUR HONOR, IN TERMS OF THE TIMING, ONE
22 WEEK TO RESPOND TO THE NEW DAUBERT MOTION, THAT'S NOT MUCH TIME
23 TO REVIEW IT AND ANALYZE IT AND HAVE AN EXPERT COMMENT ON THAT.
24 IS IT POSSIBLE TO GET MORE TIME THERE?

25 THE COURT: YOU MEAN ON THE DAUBERT?

1 MS. LUTTON: ON THE DAUBERT.

2 NO, I'M SORRY, ON THE REPORT.

3 THE COURT: OH, OKAY. WELL, HOW MUCH TIME DO YOU
4 NEED? JUST GIVE ME A SCHEDULE, A PROPOSAL THAT WOULD GIVE YOU
5 TIME TO FILE THE MOTIONS IN LIMINE BY MAY 8TH.

6 MR. ELACQUA: YOUR HONOR, THIS IS BEN ELACQUA FOR
7 APPLE.

8 SO ONE THING I JUST WANT TO CONFIRM, IF THEY'RE FILING
9 THEIR NEW REPORT ON APRIL 11, OBVIOUSLY WE DON'T KNOW WHAT
10 THEIR NEW THEORY IS GOING TO BE AND WE PRESUME THAT THERE'S NO
11 REOPENING OF DISCOVERY OR FACTUAL DISCOVERY.

12 THE COURT: OH, NO.

13 MR. ELACQUA: WE'RE NOT GOING TO SEE SOME SURVEY OR
14 SOMETHING. I JUST WANT TO CONFIRM THAT.

15 THE COURT: OH, NO. DISCOVERY IS LONG CLOSED.

16 MR. ELACQUA: I UNDERSTAND. SO IF WE GET THE NEW
17 REPORT, OBVIOUSLY WE DON'T KNOW WHAT THE THEORY IS AND WHAT THE
18 EVIDENCE AND THEIR NEW THEORY WILL BE.

19 I THINK IF WE HAD -- YOU PROPOSED A WEEK. I THINK IF WE
20 HAD A LITTLE BIT LONGER, TWO WEEKS, THAT WOULD BE SUFFICIENT
21 TIME FOR OUR EXPERT TO RESPOND TO THAT; AND THEN WE, I THINK
22 AFTER THAT, WILL NEED A WEEK, A WEEK TO TEN DAYS, JUST DEPENDS
23 ON SCHEDULES, OBVIOUSLY, OF THE EXPERTS FOR DEPOSITIONS, AND
24 THEN WE CAN FILE A DAUBERT MOTION SHORTLY AFTER THAT.

25 SO APRIL 11TH -- APRIL 11TH WOULD BE THE OPENING REPORT

1 AND TWO WEEKS AFTER THAT, WHICH WOULD BE APRIL 25TH, WOULD BE
2 REBUTTAL.

3 WE'D NEED, I WOULD ESTIMATE, SEVEN TO TEN DAYS TO DO
4 DEPOSITIONS, WHICH PUTS US RIGHT INTO THE FIRST OF MAY.

5 THE COURT: ALL RIGHT. THIS IS WHAT I'M GOING TO DO:
6 I'M GOING TO EAT INTO MY OWN TIME, WHICH IS GOING TO MAKE IT
7 MORE DIFFICULT FOR MY STAFF AND ME, BUT WE CAN HAVE OPPOSITIONS
8 ON MAY 29TH -- LET'S SEE. JUNE 12TH. JUNE 12TH, OPPOSITIONS
9 TO MOTIONS IN LIMINE.

10 DO YOU NEED ONE WEEK OR TWO WEEKS FOR OPPOSITIONS? CAN
11 YOU JUST DO ONE WEEK?

12 MR. ELACQUA: YES, YOUR HONOR, FOR APPLE WE CAN.

13 MS. PEDEN: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. SO IF YOU FILE MOTIONS IN
15 LIMINE MAY 22ND, HAVE OPPOSITIONS FILED MAY 29TH.

16 HOW MUCH TIME DO YOU NEED BETWEEN THE CLOSE OF EXPERT
17 DISCOVERY AND WHEN YOU FILE? YOU WANT THE DAUBERTS TO BE ON
18 THE SAME SCHEDULE AS THE MOTIONS IN LIMINE?

19 MR. ELACQUA: I THINK THAT'S A FAIR -- THAT'S A FAIR
20 SCHEDULE, YOUR HONOR.

21 AND, YOUR HONOR, I WILL NOTE FOR THE RECORD, YOUR ORIGINAL
22 PRETRIAL DATE WAS JUNE 12TH. OBVIOUSLY IT'S AT YOUR HONOR'S
23 DISCRETION, BUT WE DID MOVE -- THAT WAS BECAUSE THE ORIGINAL
24 TRIAL DATE WAS JUNE 30TH. WE DID MOVE THE TRIAL DATE BACK TO
25 JULY 14TH, SO WE DO HAVE SOME ADDITIONAL TIME THERE IN CASE --

1 I'M JUST POINTING THAT OUT.

2 THE COURT: YEAH.

3 MR. ELAQUA: WE DON'T WANT TO BURDEN THE COURT.

4 THE COURT: I HAVE APPLE V. SAMSUNG POST-TRIAL
5 MOTIONS ON JULY 10TH. I'VE GMAIL SUMMARY JUDGMENT JULY 17TH.
6 SO IF YOU WANT TO GO INTO THAT ZONE, YOU'RE WELCOME TO.

7 MR. ELACQUA: NO, YOUR HONOR.

8 (LAUGHTER.)

9 THE COURT: OKAY. I DON'T THINK WE HAVE ANY OTHER
10 DATES IN JUNE THAT ARE OPEN. WE CAN TAKE A LOOK. WE'RE PRETTY
11 FULL, AREN'T WE?

12 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE
13 CLERK.)

14 THE COURT: YOU'RE WELCOME TO GO INTO DANGEROUS ZONE.
15 THAT'S UP TO YOU. I'M JUST NOT GOING TO HAVE TIME NECESSARILY
16 FOR YOUR CASE.

17 MR. ELACQUA: THAT IS NOT OUR INTENT, YOUR HONOR. WE
18 WANT TO STAY AWAY FROM DANGER ZONES.

19 THE COURT: I HAVE CLAIM CONSTRUCTION ON JUNE 12TH
20 EVEN.

21 THE CLERK: JUNE 5 AND 12TH IS TAKEDA.

22 THE COURT: YEAH.

23 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE
24 CLERK.)

25 THE COURT: I CAN MOVE THIS TO JUNE 26TH. DO YOU

1 WANT ME TO MOVE THE PRETRIAL TO JUNE 26TH? IS THAT BETTER?

2 MR. ELACQUA: YOUR HONOR, I THINK THAT GIVES
3 EVERYBODY MORE TIME, YES, YOUR HONOR.

4 THE COURT: IS THAT BETTER?

5 MR. BUMGARDNER: I THINK SO, YOUR HONOR.

6 THE COURT: OKAY.

7 MR. BUMGARDNER: IF I COULD ASK, ARE WE -- IS THE
8 COURT STILL ANTICIPATING THAT WE WOULD SUBMIT A NEW DAMAGES
9 REPORT ON APRIL 11?

10 THE COURT: WELL, NO. I THINK IF WE BUMP THIS TO
11 JUNE 26TH, I CAN GIVE EVERYBODY A LITTLE MORE TIME.

12 MR. BUMGARDNER: OKAY. THAT'S --

13 THE COURT: OKAY. SO WHY DON'T WE MOVE -- AND THIS
14 IS BETTER ANYWAY, UNLESS YOU WANT TO BE WITH AN ACID REFLUX
15 CLAIM CONSTRUCTION ON JUNE 12TH.

16 MR. BUMGARDNER: I WANT TO STAY WAY OUT OF THE DANGER
17 ZONE, YOUR HONOR.

18 THE COURT: OKAY. SO LET'S MOVE THE PTC TO
19 JUNE 26TH, THAT'LL ALSO BE THE DATE FOR ANY DAUBERTS, AND I
20 WANT REALLY STRAIGHT -- I MEAN, YOU ALL BRIEFED 250 PAGES WORTH
21 JUST FOR TODAY. THAT WAS TOO MUCH AND THERE WAS SO MUCH
22 DUPLICATION WHERE THE SAME ISSUES WERE BRIEFED IN AT LEAST TWO
23 DIFFERENT MOTIONS ON A NUMBER OF INSTANCES.

24 SO I'M GOING TO ASK YOU, I REALLY NEED TIGHT TIME LIMITS.
25 I -- JUST TO TELL YOU, WHEN YOU USE MORE TIME, I SPEND LESS

1 TIME READING EACH PAGE. SO YOU GET THE VOLUME, BUT YOU GET
2 MUCH LESS DEPTH. SO IT'S UP TO YOU ALL. IF YOU WANT TO DO
3 VERBAL DIARRHEA FOR 3,000 PAGES, YOU CAN DO IT, BUT YOU'RE
4 GOING TO GET THE SAME AMOUNT OF TIME READING THAT DOCUMENT.

5 MR. BUMGARDNER: I'M HAPPY WITH -- WHATEVER THE COURT
6 WOULD LIKE TO PUT IN THE WAY OF PAGE LIMITS, I'M FINE WITH
7 THAT.

8 THE COURT: I'M NOT SAYING ANY OF THESE BRIEFS WERE
9 VERBAL DIARRHEA, OF COURSE, BUT I'M JUST SAYING THE MORE TIGHT,
10 CONCISE, AND FOCUSSED, IT REALLY HELPS TO BE ABLE TO GIVE YOU
11 REALLY CLOSE ATTENTION TO YOUR BEST ARGUMENTS AND I CAN'T DO
12 THAT WHEN I'M DESPERATELY TRYING TO READ 250 PAGES FOR THIS
13 AFTERNOON. SO I REALLY DON'T WANT THAT TO HAPPEN AGAIN,
14 PLEASE.

15 SO IF WE HAVE JUNE 26TH, THEN -- ALL RIGHT. THEN YOU WANT
16 TO DO OPPOSITIONS -- WELL, HOW MUCH TIME CAN YOU GIVE ME? IF
17 IT'S ONLY TWO WEEKS, THAT'S OKAY. A LITTLE BIT MORE TIME MIGHT
18 BE GOOD, BUT I THINK TWO WEEKS IS OKAY IF IT'S REALLY KIND OF
19 NARROW ISSUES, BUT OTHERWISE I WOULD LOVE THREE.

20 MR. ELACQUA: I THINK THREE WEEKS, YOUR HONOR -- AND
21 WE'RE TALKING ABOUT OPPOSITIONS TO MOTIONS IN LIMINE AND THE
22 DAUBERTS?

23 THE COURT: AND DAUBERTS, YEAH. SO IF WE HAVE
24 JUNE 26TH AS THE NEW HEARING DATE -- ONE, TWO, THREE -- THAT
25 WOULD BE JUNE 5 FOR OPPOSITIONS.

1 OKAY. SO HOW MUCH TIME DO YOU NEED FOR OPPOSITIONS TO
2 DAUBERTS AND MOTIONS IN LIMINE? DO YOU NEED ONE WEEK OR TWO
3 WEEKS?

4 MR. ELACQUA: I THINK, YOUR HONOR, ONE WEEK WOULD BE
5 SUFFICIENT TO OPPOSE.

6 THE COURT: OKAY. ALL RIGHT. SO THEN YOU'D HAVE
7 MAY 29TH AS THE DUE DATE.

8 I WOULD LIKE -- SO YOUR MOTION IN LIMINE IS 15 PAGES MAX,
9 FIVE MOTIONS MAX.

10 I'D LIKE TO PUT SOME LIMITS ON THE DAUBERTS.

11 MR. ELACQUA: YOUR HONOR, I AGREE, AND I HAVE A -- I
12 GUESS A QUESTION REALLY FOR THE COURT.

13 WE'VE MOVED ON MR. DANSKI AND YOU'VE TENTATIVELY GRANTED
14 THAT.

15 THE COURT: SURE.

16 MR. ELACQUA: THEY'VE MOVED ON MR. MEYER AND YOU'VE
17 TENTATIVELY DENIED THAT.

18 THE COURT: YES.

19 MR. ELACQUA: I PRESUME WE'RE TALKING ONLY ABOUT A
20 DAUBERT MOTION AS TO MR. DANSKI'S NEW REPORT. THEY'RE NOT -- I
21 GUESS THAT'S THE QUESTION TO THE COURT. GPNE IS NOT GOING TO
22 FILE A NEW DAUBERT MOTION AS TO MR. MEYER WITH THE COURT, AND
23 WE DON'T KNOW WHAT HE'S GOING TO HAVE TO REBUT, BUT --

24 THE COURT: I REALLY HOPE THERE'S NO NEW DAUBERTS.
25 YOU KNOW, I'M HOPING THAT THESE ORDERS WOULD GIVE ENOUGH

1 GUIDANCE THAT WE WOULDN'T HAVE TO BE RETREADING THE SAME
2 ISSUES --

3 MR. BUMGARDNER: WE'RE --

4 THE COURT: -- AS THE CASE LAW.

5 MR. ELACQUA: I THINK OUR OPINIONS ARE PRETTY LAID
6 OUT THERE, AND OBVIOUSLY THERE WILL BE REBUTTAL OPINIONS TO
7 WHAT MR. DANSKI'S NEW APPROACH IS.

8 THE COURT: SURE.

9 MR. ELACQUA: BUT WE DON'T KNOW WHAT THAT'S GOING TO
10 BE.

11 THE COURT: CAN WE SAY FOUR PAGES MAX?

12 MR. ELACQUA: TO A DAUBERT MOTION?

13 THE COURT: UM-HUM.

14 MR. BUMGARDNER: THAT'S FINE WITH US, YOUR HONOR.

15 MR. ELACQUA: IF YOUR HONOR WANTS FOUR, WE'LL DO IT
16 IN FOUR.

17 THE COURT: OKAY. I MEAN, I REALLY DON'T WANT WHOLE
18 BRIEFS AND LITIGATION --

19 MR. ELACQUA: WE UNDERSTAND. YOU KNOW THE LAW, YOUR
20 HONOR.

21 THE COURT: AND, YOU KNOW, EVERYTHING YOU ALL FILE,
22 EVERY WORD GETS READ, SO, YOU KNOW, WE'RE FAMILIAR WITH THE
23 ARGUMENTS YOU'VE RAISED ALREADY SO THERE'S NO NEED TO RETREAD A
24 LOT OF OLD GROUND.

25 SO LET'S SAY FOUR PAGES EACH. I MEAN, I'D BE HAPPY WITH

1 THREE.

2 MR. ELACQUA: WE'LL TRY AND MAKE IT THREE.

3 THE COURT: ALL RIGHT. THANK YOU. SO THREE PAGES
4 EACH.

5 OKAY. SO THEN UNDERSTANDING YOUR DATES FOR MOTIONS IS
6 MAY 29, HOW MUCH TIME DO YOU NEED BETWEEN THE CLOSE OF DAMAGES
7 EXPERT DISCOVERY AND THE NEW MOTION DEADLINE?

8 MR. ELACQUA: WELL, YOUR HONOR, WE'LL NEED SOME TIME
9 TO TAKE A DEPOSITION OF MR. DANSKI AND MR. MEYER. ADMITTEDLY,
10 I'M NOT -- I HAVE NOT CHECKED WITH THEIR SCHEDULES ON THIS.

11 THE COURT: YEAH.

12 MR. ELACQUA: SO I'D ASK THE COURT FOR A LITTLE
13 FLEXIBILITY. I'M HOPING WE COULD DO IT IN A WEEK, OBVIOUSLY
14 THERE'S ONLY TWO DEPOSITIONS, BUT I DON'T KNOW IF THEY'LL BE
15 ON -- IF THERE'S SOME PRESCHEDULED VACATION OR SOMETHING DURING
16 THAT SEVEN TO TEN DAYS.

17 THE COURT: I'M FINE IF YOU ALL WANT TO WORK THIS
18 SCHEDULE OUT. THE ONLY QUESTION IS IF YOU CAN'T REACH AN
19 AGREEMENT AND THEN I'M GOING TO HAVE TO DECIDE SOME DISPUTE,
20 THAT'S THE ONLY REASON WHY I THOUGHT, YOU KNOW, WE COULD JUST
21 TAKE CARE OF IT TODAY.

22 MR. BUMGARDNER: AND I WOULD MAKE THAT PROPOSAL, YOUR
23 HONOR, THAT IF WE COULD GET WITH APPLE AND JUST -- BECAUSE I'M
24 NOT SURE OF WHAT MR. DANSKI'S SCHEDULE IS, IF HE'S -- I JUST
25 HATE TO VOUCH FOR SOMEBODY'S SCHEDULE THAT I DON'T KNOW.

1 I'M GOING TO TAKE IT BACK THAT THE COURT HAS INSTRUCTED US
2 NOT TO COME BACK TO THE COURT, THAT WE'RE GOING TO WORK OUT A
3 SCHEDULE AND NOT BOTHER THE COURT WITH THIS, AND CERTAINLY, ON
4 BEHALF OF GPNE, WE WILL DO OUR UTMOST TO WORK WITH APPLE TO DO
5 SOMETHING THAT MAKES SENSE FOR ALL THE ATTORNEYS, THE EXPERTS,
6 AND EVERYTHING IF THAT WOULD BE ACCEPTABLE TO THE COURT AND
7 APPLE.

8 MR. ELACQUA: I'M OKAY WORKING OUT THE EXPERT
9 DISCOVERY, ALTHOUGH I THINK IT'S IMPORTANT THAT WE SET THE
10 DATES FOR THEIR OPENING REPORT AND OUR REBUTTAL REPORT AND THE
11 DATE TO FILE THE MOTIONS.

12 THE COURT: WELL, WE HAVE EIGHT WEEKS. WE HAVE EIGHT
13 WEEKS BETWEEN TODAY AND MAY 29TH, SO WE COULD JUST DO TWO, TWO,
14 TWO, TWO, TWO IF YOU WANTED TO DO THAT. IF IT'S TWO, TWO, TWO,
15 TWO, TWO, THEN YOUR REPORT WOULD BE DUE, WHAT, APRIL 17TH; THE
16 REBUTTALS WOULD BE DUE MAY 1ST; AND YOU WOULD HAVE TO FINISH
17 DEPOSITIONS BY MAY 15TH SUCH THAT YOU WOULD HAVE TWO WEEKS TO
18 PREPARE YOUR MOTIONS.

19 NOW, IF YOU WANTED TO CUT IT CLOSER AND YOU NEEDED MORE
20 TIME, YOU COULD, YOU KNOW, JUST PREPARE YOUR MOTIONS IN A WEEK
21 AND SAY THE CLOSE OF EXPERT DISCOVERY IS MAY 22ND.

22 MR. BUMGARDNER: AND THOSE DATES ARE FINE I THINK,
23 YOUR HONOR. WE JUST OBVIOUSLY WANT TO GET THE TRANSCRIPT FROM
24 TODAY'S HEARING SO WE CAN VERY CLOSELY FOCUS ON THE
25 INSTRUCTIONS AND COMMENTS YOUR HONOR MADE ABOUT, YOU KNOW, WHAT

1 NEEDS TO BE IN THIS NEW REPORT. SO THAT WOULD BE ALL I WOULD
2 ASK.

3 AND, AGAIN, IF -- IT SOUNDS LIKE THE COURT IS OPEN -- IF
4 THE PARTIES NEED TO SHIFT THESE DATES WITH AGREEMENT AMONG THE
5 PARTIES, THE COURT IS OKAY WITH THAT AS LONG AS WE'RE GETTING
6 OUR MOTIONS FILED TIMELY AS DIRECTED BY YOUR HONOR?

7 THE COURT: THAT'S FINE. THE SCHEDULE I'M PROPOSING
8 IS GPNE'S REPORT IN TWO WEEKS, APRIL 17TH; APPLE'S RESPONSE,
9 TWO WEEKS, DUE MAY 1; COMPLETE THE DEPOSITIONS OF THE TWO
10 EXPERTS BY MAY 15TH; AND THEN HAVE TWO WEEKS TO PREPARE YOUR
11 MOTIONS.

12 BUT IF YOU WANT TO DEVIATE FROM THAT, YOU CAN, BUT IT HAS
13 TO BE BY STIPULATION. I DON'T WANT TO SEE IT.

14 MR. BUMGARDNER: UNDERSTOOD.

15 MR. ELACQUA: UNDERSTOOD, AND THAT SCHEDULE SEEMS
16 FINE.

17 THE COURT: ALL RIGHT.

18 MR. ELACQUA: YOUR HONOR, THE LAST POINT I WANT TO
19 MAKE IS AS TO YOUR POINT ON THE TESTING OF THE AGILENT --

20 THE COURT: YES, OKAY.

21 MR. ELACQUA: TO THE EXTENT WE NEED TO DO SOME
22 ADDITIONAL SUPPLEMENTATION WITH DR. WILSON ON THAT --

23 THE COURT: UM-HUM.

24 MR. ELACQUA: -- WE'D PROPOSE IT BE ON THE SAME
25 SCHEDULE.

1 THE COURT: OKAY. WHAT DOES THAT MEAN? THAT YOU
2 WOULD DO A NEW REPORT? WHAT DO YOU -- WHEN YOU SAY
3 SUPPLEMENTAL --

4 MR. ELACQUA: TO THE EXTENT SHE WOULD NEED TO PUT IN,
5 I DON'T WANT TO CLASSIFY IT AS A NEW REPORT, IT WOULD BE
6 SUPPLEMENTING HER PRIOR REPORT, WHETHER THERE'S SOME NEW
7 PARAGRAPHS TO SAY WHAT SHE DID. WE WOULD PROPOSE IT BE ON THE
8 SAME SCHEDULE AS YOU JUST LAID OUT.

9 MR. BUMGARDNER: AND LET ME EXPRESS --

10 MR. ELACQUA: ASSUMING WE CAN DO THAT WITHIN TWO
11 WEEKS AS FAR AS THE PARAMETERS AND WHAT WE DISCUSSED EARLIER.

12 MR. BUMGARDNER: I WOULD EXPRESS A LITTLE BIT OF
13 HESITANCY THERE, YOUR HONOR. APPLE HAS HAD A CHANCE TO DO THIS
14 TEST AND THEY CHOSE NOT TO. DR. WILSON TESTIFIED THAT SHE
15 THOUGHT IT WAS IRRELEVANT.

16 FOR HER TO NOW COME IN AND LOAD UP HER REPORT WITH SOME
17 NEW TESTING THAT APPLE HAS ALREADY HAD A CHANCE TO DO AND
18 DIDN'T ATTEMPT TO --

19 MR. ELACQUA: I DON'T THINK I'M TALKING ABOUT LOADING
20 ANYTHING UP, YOUR HONOR. IF THEY'RE NOT GOING TO CHALLENGE HER
21 REBUTTAL OPINIONS AS TO HER TESTIMONY AT TRIAL -- AND YOUR
22 HONOR JUST GAVE AN ORDER TO GO DO SOME ADDITIONAL LOOKING INTO
23 THIS ISSUE, IF SHE DOES THAT AND SHE GETS ON THE WITNESS STAND
24 AND STARTS TALKING ABOUT IT, I PRESUME COUNSEL IS NOT GOING TO
25 GET UP AND SAY "MOVE TO STRIKE THAT, SHE DIDN'T OFFER AN

1 OPINION ON THAT IN HER REPORT."

2 IF THAT'S THEIR STANCE, I THINK WE'RE OKAY AND SHE
3 PROBABLY DOESN'T NEED A REPORT. WE CAN'T HAVE THAT SITUATION
4 COME UP.

5 THE COURT: WELL, YOU KNOW, THIS ISSUE OF THE
6 EMULATION TEST WAS DISCLOSED A LONG TIME AGO, AND DR. WILSON
7 CHOSE NOT TO DO HER OWN TEST BECAUSE SHE THOUGHT IT WAS
8 IRRELEVANT. SO I THINK IT'S NOT FAIR AT THIS TIME TO NOW DO
9 SOMETHING SHE SHOULD HAVE DONE BEFORE. SO I'M NOT GOING TO
10 ALLOW -- YOU KNOW, MAYBE I'LL JUST SCRATCH THAT.

11 I'M GOING TO DENY THE MOTION TO STRIKE DR. DINAN'S
12 EMULATION TEST RESULTS, AND I THINK, YOU KNOW, THE DOOR IS
13 CLOSED. I DON'T THINK APPLE GETS A DO-OVER ON THIS.

14 MR. ELACQUA: YOUR HONOR, IF I COULD MAKE ONE LAST
15 POINT ON THAT?

16 THE COURT: WHAT'S THAT?

17 MR. ELACQUA: I DON'T THINK WE'RE ASKING FOR A
18 DO-OVER, YOUR HONOR. I THINK WE'RE ASKING TO GO LOOK AT IT,
19 AND ALL WE'RE ASKING TO DO -- ALL WE'RE REQUESTING OF THE COURT
20 IS THAT IF DR. WILSON WANTS TO SAY SOMETHING ABOUT THAT AFTER
21 SHE GOES AND LOOKS AT IT, THAT COUNSEL FOR GPNE IS NOT GOING TO
22 MOVE TO STRIKE HER TESTIMONY IN THAT REGARD, WHETHER THAT COMES
23 IN THROUGH A SHORT TWO-PAGE, THREE-PAGE SUPPLEMENT OR THEY JUST
24 WANT TO DEPOSE HER FOR A COUPLE HOURS OR ANY OF THE
25 COMBINATION.

1 THE COURT: SHE SHOULD HAVE ALREADY DONE IT. I MEAN,
2 THE DEADLINES HAVE PASSED.

3 MR. ELACQUA: I UNDERSTAND THE COURT'S ORDER, YOUR
4 HONOR.

5 THE COURT: YEAH.

6 MR. ELACQUA: I GUESS I WOULD ASK FOR THE SAME ON --
7 MR. DANSKI IS GETTING A DO-OVER HERE, SO WE'D JUST ASK THAT
8 DR. WILSON BE --

9 THE COURT: WELL, I MEAN, I THINK I WOULD GET
10 REVERSED IF I MAKE THEM GO TO TRIAL WITH NO DAMAGES THEORY AND
11 NO DAMAGES EXPERT, WOULDN'T YOU AGREE?

12 MR. ELACQUA: THEY'VE GOT 13 LICENSES, YOUR HONOR,
13 AND THEY COULD STAND UP THERE AND TALK ABOUT THEM AND THEY'VE
14 IGNORED ALL OF THEM.

15 MR. BUMGARDNER: YOUR HONOR, I -- I JUST SEE THIS AS
16 VERY DIFFERENT, THE DAMAGES EXPERT SITUATION VERSUS -- I MEAN,
17 MR. DANSKI TRIED.

18 THE COURT: YEAH. I THINK I'M NOT GOING TO ALLOW A
19 SUPPLEMENTATION ON THAT. THE TIME HAS PASSED.

20 OKAY. LET'S TALK ABOUT ALTERNATIVE DISPUTE RESOLUTION.
21 IS THAT SOMETHING THAT APPLE IS INTERESTED IN? I GET THE SENSE
22 THE PLAINTIFFS ARE INTERESTED IN IT. IF YOU ARE, THEN I'D LIKE
23 TO ORDER IT. IF YOU'RE NOT, I'M NOT GOING TO REQUIRE IT.

24 MS. LUTTON: WE DON'T THINK THAT WOULD BE PRODUCTIVE
25 IN LIGHT OF THE CHINA LITIGATION, YOUR HONOR.

1 THE COURT: ALL RIGHT. THEN I'M NOT GOING TO REQUIRE
2 IT.

3 OKAY. WHAT ELSE DO WE HAVE TO DO FOR TODAY? I THINK THAT
4 MAY BE -- THAT MAY BE IT.

5 I GUESS THEN I WON'T SEE YOU AGAIN UNTIL THE PRETRIAL
6 CONFERENCE, WHICH WILL BE JUNE 26TH. THAT'LL BE AT 1:30. I
7 GUESS AT THAT TIME WE CAN, YOU KNOW, WORK OUT THE LOGISTICS ON
8 TIME LIMITS AND NUMBER OF JURORS AND NUMBER OF PEREMPTORIES AND
9 THE LIKE.

10 I DON'T THINK THERE'S -- DO YOU THINK THERE'S ANYTHING
11 ELSE THAT WE NEED TO DO TODAY?

12 MR. BUMGARDNER: I'M NOT AWARE OF ANYTHING, YOUR
13 HONOR.

14 THE COURT: OKAY.

15 MS. LUTTON: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. OKAY. THANK YOU. I
17 APPRECIATE IT.

18 MR. BUMGARDNER: THANK YOU, YOUR HONOR.

19 MS. LUTTON: THANK YOU, YOUR HONOR.

20 MR. ELACQUA: THANK YOU, YOUR HONOR.

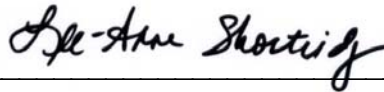
21 MR. SUSSER: THANK YOU, YOUR HONOR.

22 (THE PROCEEDINGS WERE CONCLUDED AT 4:41 P.M.)
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 11, 2014